THE

TRIAL

OF THE HONOURABLE &c.

AUGUSTUS KEPPEL,

Admiral of the Blue Squadron,

FOR A

Charge of Miſconduct and Neglect of Duty,

EXHIBITED AGAINST HIM

By Vice-Admiral Sir Hugh Palliſer.

WITH AN

INTRODUCTION,

Including a Recapitulation of thoſe Events that gave Riſe to ſo extraordinary a Charge, with all the neceſſary Papers relative thereto.

TO WHICH IS ADDED,

A DICTIONARY of all the SEA TERMS uſed in the Courſe of the Work.

Inſcribed to ADMIRAL MONTAGUE.

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TO

ADMIRAL MONTAGUE.

SIR,

SO long as the Trial of *Admiral Keppel* ſhall be remembered, the Name of MONTAGUE will be admired. The very conſiderable Pains you took to examine into the Truth of Facts, and, without the Chicanery of Law, to diſcriminate right from wrong, will endear you to every Seaman and real Friend of his Country.

I beg leave to inſcribe the following Pages to you, as a ſmall Token of my Reſpect.

The Editor.

INTRODUCTION.

TO render this Trial of more value than a mere temporary publication, we think it neceſſary to lay before our readers a ſhort hiſtorical account of the expedition which gave riſe to ſo extraordinary an occurrence.

It will be needleſs to make a recapitulation of our naval tranſactions during our unhappy conteſt with America previous to this, in which nothing but expence and diſgrace had been incurred, inſtead of thoſe laurels heretofore obtained, and always expected, by the Britiſh arms. The ſecret influence of France had been ſtrongly urged by many Lords and Gentlemen in the Minority, but conſtantly diſclaimed by the Miniſtry, until their open treaty with America, and their hoſtile intentions towards us, became too glaring to be gloſſed over. A fleet was now ſaid to be ready, that was ſufficient to oppoſe the hoſtilities of a world united; but the Admiral's deſcription of that fleet, in his defence, will be an authentic teſtimony how little regard is to be paid to men who have too long been truſted with the neareſt concerns of the nation.

At length, however, Admiral Keppel, who was appointed to this command, was ſent out with a fleet, neither in good condition, nor properly ſupplied with men. This was an expedition in which no laurels could be won to adorn his own head, or ſucceſs obtained to his country. The enemy's fleet conſiſted of thirty-two ſhips of the line, beſides an incredible number of frigates; while the Engliſh conſiſted only of twenty ſail of the line, and a few frigates.

The people were unacquainted with the ſtrength of the French fleet, and had formed great expectations from the known and approved conduct and courage of Mr. Keppel; ſomething like a ray of hope had cheared them from an univerſal deſpondence, which a train of ill ſucceſs had produced; they hoped to recover that honour from the French, which they had loſt in their diſpute with the Americans.

We have every reaſon to think Admiral Keppel was no favourite at Court; and that when he went out to fight the enemies of his country, he left many of his own with the King; but we can adduce no reaſon why our navy was not on a reſpectable footing, or why the Honourable Admiral was ſent out with ſo diſproportionate a force on ſuch an expedition, in which the intereſt of the nation was ſo much concerned.

We have heard it termed, an inſult to the nation, and a traitorous abuſe of a delegated truſt; for if the Admiral had fought and been unſucceſsful, by his own confeſſion, we had loſt the empire of the ſeas; and perhaps, as ſome apprehend, it would have been the fault of the enemy if, at the ſame time, they had not made a deſcent upon our iſland, and even rendered us tributary to France.

The event of the firſt expedition may be learnt from the following Letters, which, being publiſhed in the London Gazette, muſt be authentic.

Admiralty-Office, June 24, 1778.

THE three letters from the Hon. Admiral Keppel to Mr. Stephens, ſecretary to the Admiralty, of which the following are copies and extracts, were received this afternoon at this office.

" SIR, *Victory at Sea, June* 18, 1778.

" A little before twelve o'clock yeſterday, the fleet being in a line of battle, ſteering S. S. W. the wind at weſt, and the Lizard bearing N. 44, 00 W. diſtant 25 miles, we obſerved two ſhips ſeemingly reconnoitring the fleet, with two tenders accompanying them; I immediately directed the whole fleet to chace, and between five and ſix in the evening the Milford had got cloſe along-ſide the leeward-moſt ſhip, a large French frigate; I made the ſignal for the ſhips chacing to bring down their chace to me, which Sir William Burnaby could not, by civil words, get the French officer to allow him to do; but upon the Hector's drawing near upon her, and firing a gun ſhotted, ſhe ſtood to her, and the Hector then made ſail with her towards the fleet. The other French ſhip was cloſely purſued by the Arethuſa, and Alert cutter, and, at ſome diſtance a-ſtern of them, the Valiant and Monarch.

" I am not able to inform their Lordſhips in this letter, relative to that chace, more than that an officer got to me this morning from the Valiant, who had been in the boat the whole night; his captain directed him to inform me, that he ſhould have returned agreeable to the ſignal to leave off chace, but that he obſerved the French frigate had given battle to the Arethuſa.

" At nine o'clock laſt night I ſent Sir Charles Douglas to leeward to the Hector and America, to let their captains know, it was my orders

orders they brought the French frigate under the Victory's ſtern; and Sir Charles Douglas was charged from me to expreſs every civility to the French captain, and to inform him that I ſhould ſee him when the ſhips and frigate got up to the fleet in the morning; in the mean time he was alſo to attend the frigate unmoleſted up to me; but, to my aſtoniſhment, this morning about nine o'clock, I obſerved the French ſhip ſeemingly going upon the other tack.

"One of the ſhips that was attending her fired acroſs her, which was immediately followed by the French frigate's diſcharging her whole broad-ſide and muſquetry into the America, at the very moment Lord Longford was upon the gun-wale, talking to the French captain in the moſt civil ſtrain; ſeveral of the ſhot ſtruck the America, and wounded four of her people: the French captain then ſtruck his colours; his behaviour merited the fire of the America, but Lord Longford's humanity and prudence prevailed, much to his credit, over his reſentment.

"I hope I have not done improperly in ſending the frigate into Plymouth: The circumſtance of her behaviour, and the other French frigate giving battle to the Arethuſa, has been a juſtification to myſelf for ſeizing her and ſending her into port.

"I am, Sir, your moſt obedient and very humble ſervant,

A. KEPPEL.

"P. S. The French frigate is called the Licorne, of 32 guns, and 230 men."

"*Victory, at Sea, June* 20, *at noon, the Lizard, N.* 37. 00 *E.* 19 *leagues.*

"SIR,

"BEFORE noon of yeſterday we ſaw the Valiant and Monarch, who had chaſed from the fleet on the 17th, coming down; the Valiant with a crippled ſhip in tow, which we ſoon perceived was the Arethuſa, with her main-maſt gone, and much ſhattered in other reſpects.

"The Arethuſa had come up with her chace on the evening of the 17th; ſhe proved a large French frigate with heavy metal, (the Belle Poule;) Capt. Marſhall requeſted of the French Captain to bring to, and informed him, he had orders to conduct him to his Admiral, who wiſhed to ſpeak to him; both which requeſts the French officer peremptorily refuſed to comply with; Captain Marſhall then fired a ſhot acroſs the frigate, upon which the French Captain inſtantaneouſly fired his whole broadſide into the Arethuſa, who was at that time very cloſe along-ſide, which brought on an action on both ſides, which continued for upwards of two hours; the Arethuſa being much ſhattered in her maſts, ſails, and rigging, and there being very little wind to govern her, ſhe was thrown in ſuch a ſituation as not to be able to get her head towards the French ſhip, notwithſtanding Captain Marſhall's utmoſt endeavours ſo to do. The French ſhip's head being in with the land, and getting

her fore-ſail ſet, ſhe ſtood into a ſmall bay, where boats at day light came out, and towed her into ſafety.

" Capt. Marſhall appears to have conducted himſelf in the whole of this matter with the greateſt ſpirit and gallantry, and ſpeaks with great ſatisfaction of the behaviour of his officers and ſhips company. The Arethuſa had 8 men killed, and 36 wounded; the loſs of the French muſt be conſiderable.

" I muſt not omit in this relation, to acquaint their Lordſhips, that Capt. Fairfax, in the Alert cutter, has had his ſhare in the buſineſs; he got along-ſide of a ſchooner of 10 carriage guns and 10 ſwivels, that attended the frigate that engaged the Arethuſa; upon his requeſting the commander of her to ſtand to the fleet, he made him anſwer, that he ſhould do as the frigate did; and, upon the frigate's firing upon the Arethuſa, fired his guns into the Alert; Capt. Fairfax immediately run on board of him, and they continued in that ſituation in cloſe fight, upwards of an hour, when the French veſſel ſurrendered. Captain Fairfax killed him 5 men, and mortally wounded 7; the Alert had 4 men wounded, two of them, it is apprehended, mortally.

" Several French merchant ſhips paſſed through the fleet yeſterday unmoleſted: I did not think proper in anywiſe to interrupt them in their commerce. Uſhant was then in ſight from the maſt-head."

" SIR, *Victory, at Sea, June* 20, 1778.

" EARLY in the morning of the 18th, a ſhip in the N W quarter was ſeen ſtanding into the fleet, but ſoon hauled away: The Foudroyant, Courageaux, and Robuſt, were ſent in purſuit of her; and having repaired, as well as time would permit, the Milford's damages, which ſhe received by the French frigate's having, while in converſation, ſheered on board her, ſhe was likewiſe ſent in chace. In the morning of the 19th, the Proſerpine had joined, whom I alſo directed to chace; very light winds, and eaſterly: Before twelve, the frigates and other ſhips were drawn cloſe up with the chace, a French frigate, and the ſignal being made to the ſhips to bring the chace into the fleet, ſhe was brought in accordingly, the French officer having no means whatever to avoid what has happened to him. From the behaviour of the French frigate the Licorne, on the 18th in the morning, I judged it my duty to detain this ſhip likewiſe. I directed Capt. Hood, of the Robuſt, to take the officers out of the ſhip, and diſtribute the crew among the ſhips with him; inſtructing him to ſignify to the French Captain, that I was under the neceſſity of taking this ſtep, from the extraordinary conduct of the Captain of the Licorne; at the ſame time recommended to Capt. Hood to take care, that nothing but the civileſt treatment ſhould paſs towards the French officers and their people, and every thing taken care of on board the frigate. She is called the Pallas, of 32 guns and 220 men; and, as well as could be learnt, had been eight days from Breſt on a cruize. I am, Sir, your moſt obedient and very humble ſervant,

" A. KEPPEL."

For further obſervations, and more particular remarks on this account, we refer our readers to the Admiral's defence; only execrating the man who dared to ſend out twenty ill-conditioned ſhips againſt thirty-two.

To the immortal honour of the Admiral, he dared to return to Plymouth to refit, and to be reinforced. The inſults he endured on his return, he pathetically deſcribes himſelf; but at laſt obtaining thirty ſhips of the line, he ſailed from St. Helen's the 19th of July: And we refer to his noble Defence for an account of his conduct with them, giving an account of the engagement itſelf from the Gazette of the day.

Admiralty-Office, Auguſt 2, 1778.

Captain Faulknor, of his Majeſty's ſhip the Victory, arrived at this office yeſterday in the afternoon, with a letter from the Hon. Auguſtus Keppel, Admiral of the Blue, and commander in chief of his Majeſty's ſhips employed to the Weſtward, to Mr. Stephens, of which the following is a copy:

" SIR, *Victory, at Sea, July* 30, 1778.

" MY letters of the 23d and 24th inſtant, by the Peggy and Union cutters, acquainted you, for their Lordſhip's information, that I was in purſuit, with the King's fleet under my command, of a numerous fleet of French ſhips of war.

" From that time to the 27th, the winds conſtantly in the S. W. and N. W. quarters, ſometimes blowing ſtrong, and the French fleet always to windward going off, I made uſe of every method to cloſe in with them that was poſſible, keeping the King's ſhips at the ſame time collected, as much as the nature of a purſuit would admit of, and which became neceſſary from the cautious manner the French proceeded in, and the diſinclination that appeared in them to allow of my bringing the King's ſhips cloſe up to a regular engagement: This left but little other chance of getting in with them, than ſeizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the King's fleet under my command leading up with, and cloſing with, their centre and rear.

" The French began firing upon the head-moſt of Vice-Admiral Sir Robert Harland's diviſion, and the ſhips with him, as they led up; which cannonade the leading ſhips and the Vice-Admiral ſoon returned, as did every ſhip as they could cloſe up: The chace had occaſioned their being extended, neverthleſs they were all ſoon in battle.

" The fleets, being upon different tacks, paſſed each other very cloſe: The object of the French ſeemed to be the diſabling the King's ſhips in their maſts and ſails, in which they ſo far ſucceeded as to prevent many of the ſhips of my fleet being able to follow me when

when I wore to ſtand after the French fleet; this obliged me to wear again, to join thoſe ſhips, and thereby allowed of the French forming their fleet again, and range it in a line to leeward of the King's fleet, toward the cloſe of the day; which I did not diſcourage, but allowed of their doing it without firing upon them, thinking they meant handſomely to try their force with us the next morning; but they had been ſo beaten in the day, that they took the advantage of the night to go off.

"The wind and weather being ſuch that they could reach their own ſhores before there was any chance of the King's fleet getting up with them, in the ſtate the ſhips were in, in their maſts, yards, and ſails, left me no choice of what was proper and adviſable to do.

"The ſpirited conduct of Vice-Admiral Sir Robert Harland, Vice-Admiral Sir Hugh Palliſer, and the Captains of the fleet, ſupported by their officers and men, deſerves much commendation.

"A liſt of the killed and wounded is herewith incloſed.

"I ſend Capt. Faulknor, Captain of the Victory, with this account to their Lordſhips, and am, Sir, &c.

"A. KEPPEL."

Liſt of men killed and wounded in the Action with the French Fleet, the 27th of July, 1778.

Ships Names	Killed	Wounded	Ships Names	Killed	Wounded
Monarch	2	9	Prince George	5	15
Exeter	4	6	Vengeance	4	18
Queen	1	2	Worceſter	3	5
Shrewſbury	3	6	Elizabeth		7
Berwick	10	11	Defiance	8	17
Stirling-Caſtle	2	11	Robuſte	5	17
Courageux	6	13	Formidable	16	49
Thunderer	2	5	Ocean	2	18
Vigilant	2	3	America	1	17
Sandwich	2	20	Terrible	9	21
Valiant	6	26	Egmont	12	19
Victory	11	24	Ramillies	12	16
Foudroyant	5	18	Total	133	373

No ſooner was this account publiſhed in the Gazette, than a general, though a ſilent murmur of diſcontent ran through all ranks of people. The ſtrength of each fleet was nicely examined, and they thought there was nothing of conſequence done, for which the nation had reaſon to rejoice. They would not acknowledge, or they did not recollect, the protection he had afforded to our trade, that, though no brilliant victory had been gained, the advantages had been ſuperior to one; in the ſafe return of the Eaſt and Weſt-India fleets, which, but for the Admiral's care, muſt have fallen into the hands of the enemy.

The

The expectations of the people had been raiſed to the higheſt pitch; and, overlooking the good really and ſubſtantially obtained, had ſunk into diſappointment: They wiſhed for nothing leſs than the entire deſtruction of the French fleet,* and did not doubt

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* The following is an accurate Liſt of the Ships, Guns, and Men, of the Engliſh and French Fleets, under the command of Admiral Keppel, and the Duc de Chartres, as laid before the Court-Martial.

The Engliſh Fleet, which ſailed from St. Helen's July 19.

Frigates.	Rate.	Ships.	Commanders.	Guns.	Men.	
	3	Monarch,	Capt. Rowley,	74	600	Vice-Admiral of the Red.
		Hector,	Sir J. Hamilton, Bart.	74	600	
		Centaur,	Capt. Croſby,	74	600	
		Exeter,	Nott,	64	500	
	2	Duke,	Brereton,	90	750	
Fox, Capt. Windſor.		Queen,	Sir Robert Harland, Capt. Preſcot,	90	772	
	3	Shrewſbury,	Roſs,	74	600	
		Cumberland,	Peyton,	74	600	
		Berwick,	Hon. Keith Stewart,	74	600	
		Stirling Caſtle,	Sir Charles Douglas,	64	500	
	3	Courageux,	Rt. H. Ld. Mulgrave,	74	600	Admiral of the Blue.
		Thunderer,	Hon. Capt. Walſingham	74	600	
Arethuſa, Capt. Marſhall.		Vigilant,	Capt. Kingſmill,	64	500	
	2	Sandwich,	Edwards,	90	750	
	3	Valiant,	Hon. Lev. Gower,	74	650	
Proſerpine, Capt. Sutton.	1	Victory,	Hon. Aug. Keppel, R. Adm. Campbell, Capt. Faulknor,	100	894	
	3	Foudroyant,	Jervis,	80	650	
Two Fire-ſhips.	2	Prince George,	Sir J. Lindſay, K. B.	90	750	
	3	Bienfaiſant,	Capt. Macbride,	64	500	
		Vengeance,	Clement,	74	600	
	3	Worceſter,	Capt. Robinſon,	64	500	Vice-Admiral of the Blue.
		Elizabeth,	Hon. F. Maitland,	74	600	
		Defiance,	Capt. Goodall,	64	500	
		Robuſt,	Capt. Hood,	74	600	
Milford, Sir W. Burnaby.	2	Formidable,	Sir H. Palliſer, Bart. Capt. Bazely,	90	772	
		Ocean,	Capt. Laforey,	90	750	
	3	America,	Rt. H. Lord Longford	64	500	
		Terrible,	Sir R. Bickerton, Bt.	74	600	
		Egmont,	Capt. Allen,	74	600	
		Ramillies,	Capt. Digby,	74	600	
				2278	18638	

A Liſt

doubt but that their wiſhes would have been gratified: They were diſpleaſed, and, conſequently, began to find fault. Somebody was to blame: Admiral Keppel's good character ſcreened him from cenſure, or, at leaſt, from any that has come to our knowledge. Miniſtry were repreſented as having given improper orders; and theſe orders were not allowed by the Admiralty to be produced:——But would the noble Keppel have gone to ſea with orders he could not from his heart approve?—No!—he had ample power to act as he thought proper.

Sir Hugh Palliſer, a Lord of the Admiralty, &c. and the confidential friend of the Earl of Sandwich, who preſided at that board, became the object of ſevereſt reprehenſion: He was accuſed of miſbehaviour and diſobedience; and the following charge appeared in the General Advertiſer of the 15th of Oct.

"THE principal cauſe of Mr. Keppel's not re-attacking the French at half paſt three in the afternoon, (being at that time totally

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A Liſt of the French Ships of the Line, that ſailed from Breſt in July.

Ships.	Guns.	Men.	Ships.	Guns.	Men.
Le Bretagne, —	116	1600	Le Artiſian, ——	74	800
La Ville de Paris,	94	1200	Le Diadem, —	74	800
Le Saint Eſprit, —	82	1000	Le Bien Aime, —	64	600
La Couronne, ——	82	1000	Le Solitaire, ——	64	600
*Le Duc de Bourgogne	82	1000	Le St. Michael, —	64	600
Le Robuſte, —	74	800	*L'Alexandre, —	64	600
L'Orient, ——	74	800	Le Refleche, ——	64	600
Le Glorieux, —	74	800	Le Rolande, —	64	600
Le Conquerant, —	74	800	L'Evellie, ——	64	600
Le Fendent, ——	74	800	Le Sphynx, —	64	600
Le Magnifique, —	74	800	Le Vengeur, ——	64	600
Le Partmere, ——	74	800	L'Actionaire, —	64	600
L'Intrepide, —	74	800	L'Indien, ——	64	600
L'Actif, ——	74	800	Le Triton, —	64	600
Le Zodiaque, —	74	800	L'Amphion, ——	50	400
Le Dauphin Royal,	74	800	Le Fier, — —	50	400
				2286	24200

N. B. The Duc de Bourgogne and Alexandre were not preſent on the 27th of July, the day of the engagement, and therefore their men and guns ought to be deducted from the above liſt, viz.

L'Duc de Bourgogne, — — —	82	1000	146 1600
L'Alexandre, — — —	64	600	
	146	1600	
	2140	22600	

totally refitted from the damages ſuſtained in the morning) was Sir H—— P———'s not joining him, agreeable to ſignal to form the line, he being at that time four miles to windward with his diviſion. Mr. Keppel, obſerving a non-compliance, made other ſignals for the reſpective ſhips of Sir H——'s diviſion to bear down to him, which in complying with, Sir H—— called them back under his wake. Capt. Laforey, of the Ocean, diſtreſſed how to act in conſequence of this counter order, ſailed up to Sir H——, to aſk whom he was to obey. Mr. Keppel, ſtill obſerving that diviſion continuing to windward, and neither of them obeying the ſignal, made one for the Fox, Capt. Windſor, to come to him, and deſired him to go with his compliments to Sir H——, to inform him that his ſignal had been unremittedly kept up for him and his diviſion to form the line; he ſuppoſed they did not ſee it, as they had not complied with it, and that they only waited for him and his diviſion's coming down, to renew the action. It was night before the diviſion did come down, ſo the occaſion was loſt, by the French diſappearing next morning. Mr. Keppel's ſituation is not to be expreſſed, when he found himſelf defeated in the fair proſpect he had. Theſe facts will appear in every log-book in the fleet; ſo that, if an enquiry into this affair was to take place, his conduct will bear the ſtricteſt ſcrutiny, as hitherto no viſible reaſon has appeared as an excuſe in Sir H—— P—— for not complying. Sir Robert Harland's diviſion, and Mr. Keppel's, who had ſuſtained, to all appearance, as much damage as Sir H——'s, thoſe two diviſions were refitted for action at the time above mentioned, and Sir H—— had not repaired his, lying all the time with his fore-top-ſail ſhattered, and not refitted. The damage ſuſtained of loſs of men on board Sir H——, was chiefly owing to cartridges blowing up between decks."

In conſequence of this paragraph, Sir Hugh Palliſer ſent the following letter to the Admiral, to obtain of him an approbation of his conduct that might wipe away the calumny of the accuſation.

Extract of a letter from Sir Hugh Palliſer to Admiral Keppel, dated Pall-Mall, November 3, 1778.

"I think myſelf ſo much intitled to have my conduct on the day we engaged the French fleet juſtified by you, Sir, as Commander in Chief, from thoſe aſperſions, that I confeſs I have been expecting your offer to do it; I have waited for your coming to town to aſk it: being now informed of your arrival, I loſe no time in deſiring you will contradict thoſe ſcandalous reports that have been propagated as before mentioned, by publiſhing in your own name the incloſed paper,* which I have the honour to incloſe herewith, or ſomething to that effect, that may be more agreeable to you, and as may be agreed on, if you will permit me the honour to wait on you to-morrow morning.

I am, very reſpectfully, Sir,

To the Hon. Admiral Keppel, &c. Your very obedient humble ſervant, HUGH PALLISER."

* Having

* Having ſeen a paragraph in the General Advertiſer of the 15th of laſt month, highly reflecting on the conduct of Vice-Admiral Sir Hugh Palliſer on the 27th of July, when the fleet under my command engaged the French fleet: and he having informed me that reports to the ſame purpoſe have been propagated by ſome of the officers of the Victory, I think it neceſſary, in juſtice to Sir Hugh Palliſer, to publiſh to the world, that his conduct on that day was in every reſpect proper, and becoming a good officer; and I further declare, that when I made the ſignal in the evening for the ſhips to the windward to bear down into my wake, and afterwards for particular ſhips of Sir Hugh's diviſion to do ſo, he repeated thoſe ſignals properly, and that the calling his and Vice-Admiral Sir Robert Harland's diviſion into my wake in the evening, was not for the purpoſe of renewing the battle at that time, but to be in readineſs for it in the morning; that in obedience to the ſaid ſignal, ſuch of the ſhips of Sir Hugh Palliſer's diviſion as were in condition for it, did immediately bear down, as did the reſt as ſoon as they were able, ſo that Sir Hugh Palliſer and his whole diviſion were all in my wake accordingly the next morning before day-light ready for engagement.

If Sir Hugh was innocent, he ought not to have noticed an anonymous news-paper accuſation; had he not, we believe every thing would have paſſed over, and been forgotten in the common courſe of things; but the following Letter appearing in the Morning-Poſt, added fuel to the fire:—

" HAVING ſeen, ſince my late arrival at Portſmouth, a very ſcandalous paragraph in the Morning Intelligencer of the 15th of laſt month, directly charging me with being the cauſe of Admiral Keppel's not re-attacking the French fleet, in the afternoon of the 27th of July laſt, containing many groſs falſehoods, calculated expreſsly for the purpoſe of wounding my reputation, and to repreſent me in a culpable light to the whole nation; and being well informed that injurious reports of the like nature have been induſtriouſly propagated for the ſame purpoſe by ſome malignant wicked people, it becomes neceſſary for me, in order to vindicate my own conduct, to publiſh ſuch particulars relating to the battle on that day, as may enable the public, who have a right to be fully informed of the truth in a matter of ſo much importance to them, to judge whether *I* was the cauſe of the French fleet not being re-attacked on that afternoon: I therefore requeſt you will publiſh the encloſed paper, containing the facts neceſſary to be known, for juſtifying me from the ſaid foul aſperſions. After the nation is in poſſeſſion thereof, if any individual, or if parliament, or the nation at large, call for a public enquiry, I am ready to ſtand the iſſue of ſuch enquiry, but I ſhall not anſwer any queſtions, or queries in news-papers, or otherwiſe. Your's, &c.

Pall-Mall, Nov. 4. HUGH PALLISER.

" At about ſix o'clock in the morning on the 27th of July, the Britiſh fleet was upon a wind on the larboard tack, lying up about W. by

W. by N. my diviſion leading on that tack; the French fleet was to windward; at half paſt ſix a ſignal was made for ſeveral of the ſhips of my diviſion to chace to windward, which occaſioned them to ſtretch far a-head.

" At ten the whole fleet tacked together per ſignal, and ſtood towards the French fleet, who ſoon after were plainly diſcovered to be on the larboard tack, in a regular, well-formed cloſe line of battle a-head; our fleet approached them without any order or line of battle. The ſhips of my diviſion were ſeparated from me by the above ſignal; the ſhips of the other two diviſions, though not in a regular line, appeared to be nearly ſo, and in a collected body, excepting the Duke, who was far to leeward.

" About eleven a firing began between the headmoſt ſhips in our van and ſome ſhips in the van of the enemy's fleet, which became general as our ſhips got up in ſucceſſion; each proceeding from that part of the enemy's fleet, which they reſpectively fetched, on towards the enemy's rear, engaging as they advanced along the line.——Admiral Keppel with his diviſion fetched the French admiral, and there began to engage.

" About noon, in the Formidable, I fetched within random ſhot of the Duke de Chartres' ſhip, who commanded the van diviſion of the enemy's fleet; he fired many broadſides at the Formidable, but being at too great a diſtance, ſhe did not return a ſingle ſhot, but reſerved her fire till ſhe came within point blank ſhot of the ſhip ſhe could fetch: there I began to engage, and paſſed on to the French Admiral in the centre of the line, engaging within muſquet-ſhot, and alone; having no ſecond either a-head or a-ſtern, the ſhips of my diviſion being ſcattered and ſeparated from me by ſignal as aforementioned: however, they all got into action, and though not in a connected body with their Admiral, did their duty ſo well, that they ſuffered the moſt, as appears by the damages ſuſtained by thoſe ten ſhips being equal to the damages ſuſtained by all the twenty ſhips that compoſed the other two diviſions. This was occaſioned by the regular and connected line of the enemy's ſhips being preſerved; whereby they were enabled to employ a greater force upon each ſhip in the rear of our fleet, who were ſeparated at a conſiderable interval from each other, occaſioned by the before-mentioned ſignal to chace, and from hence aroſe the numerous damages which the Formidable ſuſtained, being ſubjected to the angular fire of a long range of the enemy's ſhips as ſhe continued her progreſs along their line. This compariſon of the damages appears by the account publiſhed from Admiral Keppel's letter of the killed and wounded, which was as follows:

" Admiral Keppel's diviſion, 43 killed, and 142 wounded.—— Vice-Admiral Sir Robert Harland's diviſion, 22 killed, and 45 wounded.—Vice-Admiral Sir Hugh Palliſer's diviſion, 68 killed, and 186 wounded.

" By the blowing up of ſome powder on board the Formidable, about twenty men were hurt, but I do not recollect that any one

was killed thereby. The accident was occaſioned by a man having a cartridge under his arm at the time he fired his gun. It is ſaid the like accident happened on board other ſhips.

" I proceeded on with the Formidable to the ſternmoſt of the enemy's ſhips, keeping my mizen topſail a-back all the time, and engaged every ſhip within muſquet-ſhot, the two laſt of which appeared not to have ſuſtained any damage from any of our ſhips that had paſſed before us, not a ſhot-hole being to be ſeen in their ſails: the Formidable brought down one of the enemy's ſhip's main-yard, which ſhip appeared to be otherwiſe much damaged, for ſhe quitted their line, and went off before the wind, attended by a frigate.

" Between two and three o'clock, I had paſſed the ſternmoſt ſhip of the enemy's line; at this time Admiral Keppel was at a diſtance, coming up, and a number of ſhips about him, and, I think, with the ſignal for battle flying. I concluded he was advancing to renew the battle: Vice-Admiral Sir Robert Harland was, with ſeveral ſhips, to windward of the rear of the enemy. I immediately wore the Formidable, and laid her head towards the enemy again, in order to endeavour to get into battle again, expecting it to be renewed when Admiral Keppel came up. We were then exactly in a line with the enemy's line, and at about random ſhot from their ſternmoſt ſhips. In this ſituation the Formidable lay a conſiderable time, no other ſhip near her. Soon after this the van and centre of the enemy broke their line, and appeared to be in confuſion: ſome of their heads one way, and ſome another.

" The Victory ſhortened ſail, and unbent her main-top ſail; and about this time ſome of the enemy's ſhips appeared to be ſiling off towards us, and two or three of their freſh ſhips ſtanding directly for the Formidable; I therefore wore again, and laid her head towards Admiral Keppel to meet him:—then the enemy's ſhips edged away, and pointed to leeward of our fleet, and began to form the line in that direction.

" When the Victory and Formidable met, it was paſt 3 o'clock. The Victory paſſed the Formidable to windward, wore, paſſed under her ſtern, run down to leeward of her, and made ſail a-head; this left the Formidable at a diſtance *a-ſtern*, and ſomewhat to windward of the Victory's wake, though the leaſt ſo of any ſhip when ſhe firſt hauled the wind. A ſignal was made for ſhips to windward to bear down into the Admiral's wake, which ſignal I repeated, for it was underſtood to be for Vice-Admiral Sir Robert Harland and his diviſion to bear down; who was then far to windward, and he accordingly did bear down and brought up in the Admiral's wake, then nearly a-breaſt of the Formidable, and a little way to leeward of her.

" At this time it was apparent to the reſt of the fleet (if it was not ſo to thoſe in the Victory) that the Formidable was not in a manageable

manageable condition; we were then employed in knotting, ſplicing, &c. to get the ſhips under command, and to be able to make ſail to get up with the Admiral, who was making ſail on the ſtarboard tack, the French fleet then a-ſtern doing the ſame.

" After Sir Robert Harland had been ſome time in the Admiral's wake, he with his diviſion (by orders it is ſaid) crowded all the ſail they could carry, to get a-head of the Admiral's diviſion.

" Late in the evening we ſaw the Admiral had made the ſignal for ſome particular ſhips of my diviſion, (not the Formidable's, her incapacity being ſo apparent) all which ſignals I repeated; the Ocean, and ſuch of them as were under command, bore down according to the ſignal; others were not in a governable condition, and being employed as I was, in knotting, ſplicing, &c. did not immediately bear down. It is to be obſerved, that the Formidable, and the ſhips of my diviſion, were the laſt that came out of the engagement, were the moſt damaged, and had had leaſt time to refit; and that it is the diſabled ſhips of my diviſion that are alluded to in Admiral Keppel's letter, where he ſays, 'The 'object of the French ſeemed to be the diſabling of the King's 'ſhips in their maſts and ſails; in which they ſo far ſucceeded, as 'to prevent many of the ſhips of my fleet being able to follow me 'when I wore to ſtand after the French fleet, &c.'

" If, according to the preceding paragraph, extracted from the Admiral's own account, they were unable to follow him, going towards the enemy, they certainly were equally unable to follow him, when he immediately made ſail the contrary way, and it was unreaſonable to ſuppoſe them capable of taking, and keeping their ſtations in a line of battle, at a cable's length aſunder, whilſt in that condition.

" Can any one poſſibly believe (as the dark aſſaſſin aſſerts) that Admiral Keppel called thoſe ſame crippled ſhips to him, in order to renew the attack, and at the moment when he had juſt ſent Sir Robert Harland away from him, with his diviſion of freſh ſhips, who had been the longeſt out of the action, and had had the moſt time to repair their damage? Beſides, the Admiral's letters declare, that it was not his intention to re-attack before the next morning.

" At night, the Fox frigate, Capt. Windſor, came to the Formidable, with a meſſage from the Admiral to me, " That he wanted the ſhips of my diviſion to come into his wake;" but ſaid not a word about his waiting for them, in order to renew the attack, as is falſely aſſerted. He was anſwered by myſelf, from the ſtern gallery, in the following words, " Acquaint the Admiral I have repeated his ſignal for it;" and was going to ſay, " Tell him, that the moment my ſhip is under command, I will endeavour to get nearer to him." But the company of the frigate interrupted, by giving three cheers, which the Formidable's people returned. It then blowed freſh, was dark, and the frigate paſſed

ſo

ſo quick, that there was not time to ſay any thing more which could have been heard.

"The night was cloudy, with rain, and very dark; it required all the tattered ſails the Formidable could poſſibly ſet in the afternoon, and in the night, to keep way with the Admiral, ſo that we could only ſpare one top-ſail at a time to be unbended, in order to bend others. After we had knotted and ſpliced as much rigging as we could to ſecure the maſts, and make it ſafe to ſet ſail upon them, and having ſhifted a fore and mizen topſail, the ſhip was then under command, and, long before day-light, the Formidable, and every ſhip of my diviſion, were in the Admiral's wake, expecting to engage immediately at day-light, but the enemy's fleet were gone off."

Letter after letter, paragraph after paragraph, appeared in all the public papers, for and againſt Admiral Keppel and Sir Hugh Palliſer; but as they do not immediately concern the trial, and would not materially inform our readers, we omit them, 'till the important day in which the debate came on in the Houſe of Commons.

During this debate, which happened on Wedneſday the 2d of December, Mr. T. Luttrell concluded an animated ſpeech on the conduct of the Treaſury and Admiralty, (in which he charged them with an embezzlement in the Navy accounts of 300,000l.) with ſetting forth the neceſſity there was to enquire into the tranſactions of the 27th of July, as well in vindication of a brave Admiral, who had been much abuſed, as for our national ſafety.

Admiral Keppel aroſe, and after a ſolemn tender of his beſt ſervices to the King and his country, declared, that he had ſtepped forth as Commander in Chief of the fleet, without a private friend in adminiſtration; that he had been ſent out under very diſadvantageous circumſtances; and that the battle could not have been fought better. He alluded to Sir Hugh Palliſer's letter in the public papers, the appearance of which had a good deal ſtaggered him. He concluded by aſſerting, that he could not ſail again with Sir Hugh Palliſer; and that the Britiſh flag had not been tarniſhed in his hands.

This brought up Sir Hugh Palliſer, who took notice of Admiral Keppel's declining to ſpeak as to his perſonal bravery; ſaid it was an inſinuation, and if meant to conceal any thing againſt him, he would accept of no ſuch apology. That he had been led to the publication complained of by Admiral Keppel, by an imputation thrown out againſt his character in a Morning Paper, which charged him with not having done what he

he might have done on the 27th of July. Who it came from, he ſaid, he did not know, but he thought he had a right to addreſs the Commander in Chief, and to tell the public what part *he* had acted on that important day. Sir Hugh then expreſſed his willingneſs to have the whole tranſaction ſcrutinized, though he ſaid he did not wiſh it; not, however, that he was afraid of the reſult, as he was conſcious his conduct had been unblameable, for that he had not diſobeyed any order.

Admiral Keppel, in reply, ſaid, " Sir Hugh Palliſer's own publication is the only *inſinuation* againſt his bravery. As to the imputation which, he is pleaſed to aſſert, occaſioned his extraordinary publication, he knows where it came from. Sir Hugh Palliſer went *himſelf* into the Morning-Poſt. With reſpect to the 27th of July, when ſignal was given to Sir Hugh for him to bear down into the Victory's wake, three hours paſſed before any thing was done. I will ſay no more."

On Friday the 11th of December, Mr. T. Luttrell roſe, and made the following motion: " That an humble addreſs be preſented to his Majeſty, that he will be pleaſed to give directions, that a Court-Martial may be held, to inquire into the conduct of Vice-Admiral Sir Hugh Palliſer, in, and relative to, an action near Uſhant, the 27th of July laſt, between his Majeſty's fleet and the fleet of France, it appearing to this Houſe, that the ſaid Vice-Admiral did not obey the ſignals of his ſuperior commander, when preparing to re-engage the ſhips of the enemy."——The motion was over-ruled.

In the courſe of the debate on this motion, Admiral Keppel, in a very pathetic ſpeech, informed the Houſe, that he had very unexpectedly received notice in an official letter from the Admiralty-Office, to prepare for a Court-Martial to be held upon him, in conſequence of an accuſation ſigned by Sir Hugh Palliſer, and delivered to that Board the ſame morning, charging him, under an article of war, with neglect of duty, in not doing all in his power in the action off Uſhant to deſtroy the fleet of the enemy. After this, he could only thank all the Honourable Gentlemen who entertained a good opinion of him; and he did not doubt but they would think it impoſſible to put off the trial conſiſtent with his honour; it was a charge of ſo deep a dye, that it affected his life as well as his reputation, and, therefore, conſcious of having done his duty, and feeling as an honeſt man, he muſt expect the trial would go on, though he was ſincerely concerned for the inconveniencies and miſchief it might occaſion. Having ſaid this, he told the Houſe he ſhould retire as ſoon as he had delivered an obſervation on what had fallen

fallen from the Vice-Admiral. He ſays, "I treated him with kindneſs and regard after the action. Good God, Sir! conſider the truſt I had committed to me: No leſs than the welfare, the ſecurity of all England, againſt the menaces of an invaſion. Was that a time to enter into the unjuſt ſurmiſes of the Gentleman, that I was diſſatisfied? No, Sir, I avowed before, and I repeat it again, I had no intention to throw any blame upon him; but when I ſaw Sir Hugh Palliſer's name to a letter in the Morning-Poſt, which had a tendency to excite mutiny in the fleet, I own I then thought him to blame, and that he had accuſed himſelf to the public. But I forbear, and ſhall now retire."

On Admiral Keppel's declaring the order for a Court-Martial, there were very warm and learned debates in the Houſe, on the propriety as well as juſtice of the preſent trial; and the behaviour of the Admiralty-board was moſt ſeverely reprobated by many of the members, and as warmly defended by others.

Whatever were the ſentiments of the gentlemen within doors, we may venture to aſſert, that the voice without doors was univerſally in favour of the Admiral; and his friends formed a moſt happy preſage from the propriety of his retiring, and the dignity of his manner: nor can we help thinking, with the public in general, that the uſage of a brave Admiral, who had more than once ſerved his country faithfully, honourably, and ſucceſsfully, was exceedingly ſevere and cruel. Sir Hugh Palliſer's behaviour is not to be vindicated. It was an act of unjuſt recrimination, totally unbecoming a man who poſſeſſed either courage, honour, or virtue. The behaviour of the Admiralty-board was loudly complained of: men of the greateſt abilities aſſerted that their power in this caſe was diſcretionary; it is not to be preſumed we ſhould venture our opinion on that matter; but if it was diſcretionary, we will not heſitate to declare, that they acted unpopularly, not to ſay partially, baſely, and inſidiouſly.

Admiral Bing fell a ſacrifice to popular reſentment, and the baſe and inſidious behaviour of a ſet of men, who forſook him in the hour of his need: We muſt think that Sir Hugh Palliſer will, if he has a day of trial, fail of ſupport from his official friends: 'Tis the property of bad men to diſown their agents in calamity. Not ſo the good man, who, as he wiſhes for his friend's proſperity, will not forſake him in adverſity, but ſupport him to the utmoſt of his ability and power.

Admiral Keppel went to his trial with the *vox populi* in his favour almoſt to a man: His abilities were acknowledged, his courage

courage had been proved, and his honour hitherto unimpeached. Sir Hugh Palliſer himſelf had written a letter to the Admiral, in which he expreſſed a high opinion of his courage and conduct.

Extract of a letter from Sir Hugh Palliſer to Admiral Keppel, dated Formidable at Sea, October 5, 1778.

" Theſe prizes coming in our way are not unacceptable, but I know you would rather meet the French fleet.

" I am, with the greateſt regard and reſpect, dear Sir, your moſt obedient humble ſervant,

" HUGH PALLISER."

The Admiral's enemies were publicly known and univerſally deteſted; they could not think him guilty; and why they brought him to a trial is ſtrange and unaccountable! The Admiral's friends were ſenſible of his innocence, but they were afraid of a trial; and ſome circumſtances have fallen out in the courſe of the evidence, which muſt convince the world that no favour was deſigned him. The inſolence of a M——, the treachery of a H——, with the meanneſs of a ——, and a ——, will be a laſting memorial of diſgrace; while the evidence of Harland, Campbell, Walſingham, Allen, &c. &c. will be immortal monuments of naval honour and integrity.

Among other teſtimonies of public eſteem, the following Memorial is conſequential and important:—

To the KING.

" WE, the ſubſcribing Admirals of your Majeſty's royal navy, having hitherto on all occaſions ſerved your Majeſty with zeal and fidelity, and being deſirous of devoting every action of our lives, and our lives themſelves, to your Majeſty's ſervice, and the defence of our country, think ourſelves indiſpenſably bound by our duty to that ſervice and that country, with all poſſible humility, to repreſent to your wiſdom and juſtice,

" That Sir Hugh Palliſer, Vice-Admiral of the Blue, lately ſerving under the command of the Hon. Auguſtus Keppel, did prefer certain articles of accuſation, containing ſeveral matters of heinous offence againſt his ſaid commander in chief, to the Lords Commiſſioners for executing the office of Lord High Admiral of Great-Britain, he the ſaid Sir Hugh Palliſer being himſelf a commiſſioner in the ſaid commiſſion. This accuſation he the ſaid Sir Hugh Palliſer withheld from the 27th of July laſt, the time of the ſuppoſed offences committed, until the 9th day of this preſent December, and then brought forward for the purpoſe of recrimination againſt charges conjectured by him the ſaid Sir Hugh Palliſer, but which in fact were never made.

" That the Commiſſioners of the Admiralty, near five months after the pretended offences aforeſaid, did receive, from their ſaid colleague in office, the charge made by him againſt his ſaid commander, and without taking into conſideration the relative ſituation of the accuſer and the party accuſed, or attending to the avowed motives of the accuſation, or the length of time of withholding, or the occaſion of making the ſame, and without any other deliberation whatſoever, did, on the very ſame day on which the charge was preferred, and without previous notice to the party accuſed of an intention of making a charge againſt him, give notice of their intending that a court-martial ſhould be held on the ſaid Admiral Keppel, after forty years of meritorious ſervice, and a variety of actions in which he had exerted eminent courage and conduct, by which the honour and power of this nation, and the glory of the Britiſh flag, had been maintained and encreaſed in various parts of the world.

" We beg leave to expreſs to your Majeſty our concern at this proceeding, and to repreſent our apprehenſions of the difficulties and diſcouragements which will inevitably ariſe to your ſervice therefrom; and that it will not be eaſy for men, attentive to their honour, to ſerve your Majeſty, particularly in ſituations of principal command, if the practice now ſtated to your Majeſty be countenanced, or the principles upon which the ſame has been ſupported ſhall prevail with any Lord High Admiral, or with any commiſſioner for executing that office.

" We are humbly of opinion, that a criminal charge againſt an officer, (riſing in importance according to the rank and command of that officer) which ſuſpends his ſervice to your Majeſty, perhaps in the moſt critical exigencies of the public affairs, which calls his reputation into doubt and diſcuſſion, which puts him on trial for his life, profeſſion, and reputation, and which, in its conſequences, may cauſe a fatal ceſſation in the naval exertions of the kingdom, to be a matter of the moſt ſerious nature, and never to be made by authority but on ſolid ground, and on mature deliberation. The honour of an officer is his moſt precious poſſeſſion and beſt qualification; the public have an intereſt in it; and whilſt thoſe under whom we ſerve countenance accuſation, it is often impoſſible perfectly to reſtore military fame by the mere acquittal of a court-martial. Imputations made by high authority remain long, and affect deeply. The ſphere of action of commanders in chief is large, and their buſineſs intricate, and ſubject to great variety of opinion; and before they are to be put on the judgment of others for acts done upon their diſcretion, the greateſt diſcretion ought to be employed.

" Whether the Board of Admiralty hath by law any ſuch diſcretion, we, who are not of the profeſſion of the law, cannot poſitively aſſert; but if we had conceived that this Board had no legal uſe of their reaſon in a point of ſuch delicacy and importance, we ſhould have known on what terms we ſerved. But we never did imagine

imagine it poſſible, that we were to receive orders from, and to be accountable to thoſe who, by law, were reduced to become paſſive inſtruments to the poſſible malice, ignorance, or treaſon of any individual, who might think fit to diſarm his Majeſty's navy of its beſt and higheſt officers. We conceive it diſreſpectful to the laws of our country, to ſuppoſe them capable of ſuch manifeſt injuſtice and abſurdity.

"We therefore humbly repreſent, in behalf of public order, as well as of the diſcipline of the navy, to your Majeſty, the dangers of long-concealed, and afterwards precipitately adopted charges, and of all recriminatory accuſations of ſubordinate officers againſt their commanders in chief; and particularly the miſchief and ſcandal of permitting men, who are at once in high civil office, in ſubordinate military command, previous to their making ſuch accuſations, to attempt to corrupt the public judgment, by the publication of libels on their officers in a common news-paper, thereby exciting mutiny in your Majeſty's navy, as well as prejudicing the minds of thoſe who are to try the merits of the accuſation againſt the ſaid ſuperior officer.

HAWKE,	BRISTOL,
JOHN MOORE,	JAMES YOUNG,
BOLTON,	MATTHEW BARTON,
SAMUEL GRAVES,	FRANCIS GEARY,
HUGH PIGOT,	SHULDHAM,
ROBERT HARLAND,	CLARK GAYTON."

What anſwer was returned to this memorial we cannot learn; but thus much is evident, that it was not ſucceſsful; and the court was ordered to proceed to trial.*

The ſentence of the Court, ſo honourable to the Accuſed, was no ſooner ſpread abroad, than every face acknowledged the equity of the judgment. Every heart, but the moſt gloomy, was filled with joy; cities emulated each other in their teſtimonies of approbation and feſtivity on the occaſion.

Not

* By the Commiſſioners for executing the offices of Lord High Admiral of Great-Britain and Ireland, &c.

WHEREAS we have iſſued our orders to Sir Thomas Pye, Admiral of the White ſquadron of his Majeſty's fleet, to hold a court-martial at Portſmouth on Thurſday next, the 7th of this month, for the trial of the Honourable Auguſtus Keppel, Admiral of the Blue ſquadron of his Majeſty's fleet, upon a charge exhibited againſt him by Vice-Admiral Sir Hugh Palliſer, for miſconduct and neglect of duty on the 27th and 28th of July laſt, in ſundry inſtances therein mentioned; and whereas we think proper that you ſhould take the ſaid Admiral, the Honourable Auguſtus Keppel, into your cuſtody, and attend him to and from the ſaid court; you are hereby required and directed to repair to Admiral Keppel, and acquaint him therewith: But as it is not our intention that he ſhould be put under any greater inconvenience

Not a volume would contain a deſcription of the rejoicings, in all parts of this kingdom, and in Ireland, which the public prints notified; but the thanks of both Houſes of Parliament, and of the City of London, carry with them ſuperior marks of the moſt honourable diſtinction.

On Tueſday, Feb. 16, the Marquis of Rockingham, in the Houſe of Lords. after ſeveral handſome compliments on Admiral Keppel, and the Members who compoſed the Court-martial, read a motion, the purport of which was as follows:—"That the thanks of the Houſe be given to the Hon. Admiral Auguſtus Keppel, for his excellent management of the Britiſh fleet in the courſe of laſt ſummer, for effectually guarding our coaſts, and protecting our trade, ſo far as came within the extent of his command; and more particularly for his great bravery, conduct, and ability, on the 27th of July, in an engagement with the French."—The motion was agreed to without one diſſentient voice.

Thurſday the 18th, the Lord Chancellor acquainted the Houſe, that he had, according to the directions received from their Lordſhips, tranſmitted the thanks of the Houſe to the Hon. Admiral Auguſtus Keppel, and had received from the ſaid Admiral the following anſwer:

"My Lord,

"The very diſtinguiſhed notice which the Houſe of Lords has been pleaſed to take of my ſervices in the courſe of laſt ſummer, confers on me the higheſt honour: The advantages which their Lordſhips have thought worthy of their thanks are due to God's bleſſing, and to the gallant behaviour of many great and able officers who ſerved in the fleet, and to the bravery of the ſeamen. I can only ſay, that the warmeſt gratitude for this great honour and favour, will make me deſirous of meriting it, by the moſt ſtrenuous

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or confinement than is abſolutely neceſſary, you are to take his honour for his appearance at Portſmouth on or before the ſaid 7th day of this month, and on his arrival, attend him to and from the court during the continuance of his trial, and then to diſpoſe of him as the court-martial ſhall direct. For which this ſhall be your warrant.

Given under our hands and the ſeal of the office of Admiralty, this firſt day of January, 1779.

SANDWICH,
T. BULLER,
LISBURNE.

William Borough, Eſq; Marſhall of the Admiralty, or his deputy.

By command of their Lordſhips,
PHIL. STEPHENS.

nuous endeavours to ſerve my country. I beg leave to return your Lordſhip my beſt thanks for the flattering and polite manner in which your Lordſhip has been pleaſed to communicate to me the reſolution of the Houſe.

" I have the honour to be, with much reſpect, your Lordſhip's moſt obedient humble ſervant,

" *Audley-Street, Feb.* 17. A. KEPPEL."

The Thanks of the Houſe of Commons were delivered by the Speaker in the following words:

" ADMIRAL KEPPEL,

" This Houſe have done you the diſtinguiſhed honour of ordering their thanks to be given to you,—an honour never conferred but upon extraordinary merit; which thanks it is my duty to communicate to you in your place.

" After having ſat ſo long in this chair, I hope it is unneceſſary to declare, that I have been always happy to obey the orders of the Houſe; and I have now a particular ſatisfaction in that obedience—Indeed every generous mind muſt feel ſatisfaction, when the day of honourable acquittal ſucceeds to the day of ſevere trial; and this pleaſure was, I believe, never more general nor more ſincere than upon the preſent occaſion.

" You, Sir, was called by your Sovereign, with the approbation of all deſcriptions of men, particularly thoſe of your own profeſſion, to a ſtation of the utmoſt difficulty, and of the higheſt importance. The ſafety of this country, and the honour of the Britiſh flag, were truſted in your hands, when the enemy was expected upon our coaſt; and, notwithſtanding the moſt able diſcharge of this great and momentous truſt, you was accuſed of miſconduct and neglect of duty. But, after a very long and full inveſtigation, by men in every reſpect the beſt qualified to judge, that charge appeared to be ill-grounded and malicious; and your judges have unanimouſly and honourably acquitted you, and have further added, that your conduct on the 27th and 28th days of July laſt was that of a judicious, brave, and experienced officer. Surely then it cannot be matter of ſurpriſe, that extraordinary marks of reſpect and eſteem are ſhewn to ſuch a character. We now know with certainty, that our confidence in you was not miſplaced; and we entertain a well-grounded hope, that there ſtill remain, amongſt the Naval officers, talents and abilities fully equal to this dangerous criſis.

" Amidſt this general joy, I cannot help repeating the ſingular pleaſure which I feel in giving you the thanks of this Houſe, which I now do, for your diſtinguiſhed courage, conduct, and ability, in defending this kingdom in the courſe of the laſt ſummer, effectually protecting its trade, and more particularly for your having glorioufly upheld the honour of the Britiſh Flag on the 27th and 28th of July laſt."

The

The ADMIRAL's ANSWER.

" MR. SPEAKER,

" It is impoſſible, by any expreſſions I can uſe, to do juſtice to my feelings of gratitude to the Houſe, for the honour they have done me by their approbation of my conduct.

" The good opinion of my fellow-citizens, expreſſed by the repreſentatives of the nation, cannot but be received by me as a moſt acceptable addition to the ſatisfaction I felt in the recent ſentence, to which you have been pleaſed to allude, of a Court-martial; the reſult of a full and deliberate enquiry, expreſſive of their ſentiments of the ſubject referred to their examination, in terms equally honourable to themſelves and to me.

" The pleaſure I feel at this moment is not a little heightened by the unavoidable recollection of the very different emotions I felt when I was laſt in this houſe, and in this place.

" I ſhould be guilty of great injuſtice, if, on an occaſion like the preſent, I neglected to inform this Houſe, that my efforts for the public ſervice, in the inſtances in which the Houſe has been pleaſed to diſtinguiſh them, were moſt zealouſly ſeconded by many as gallant and able officers as the Navy of England ever produced; to whoſe attention and ſpirit, next to the Divine Providence, the ſucceſs of theſe efforts ought to be in a great meaſure aſcribed.

" I cannot ſit down without returning to you, Sir, perſonally, my particular thanks, for the very, very obliging terms in which you have executed the commands of the Houſe."

On Saturday, Feb. 19, Admiral Keppel was waited upon by the Committee from the Court of Common Council of London, when Alderman Croſby, as ſenior Alderman, addreſſed the Admiral in the following words:

" ADMIRAL KEPPEL,

" The Citizens of London, amidſt the acclamations of a grateful people, beg leave to expreſs their joy on your honourable acquittal from a very heavy and ſevere charge of neglect and miſconduct on the 27th and 28th of July laſt; a charge which appeared on your trial to be *ill-founded* and *malicious*.

" The Committee, Sir, who have now the honour to wait on you, by order of the Lord-Mayor, Aldermen, and Commons of the City of London, in common-council aſſembled, are happy in this opportunity to teſtify their approbation of your conduct in the many ſignal ſervices done to your country.

" I think, Sir, I cannot expreſs their ſentiments better, than by reading to you the unanimous reſolutions of the Court of Common Council, holden in the chamber of Guildhall of the city of London, on Friday the 12th day of February, 1779:

PLUMBE,

PLUMBE, MAYOR.

Reſolved unanimouſly, That the thanks of this Court be given to the Hon. Auguſtus Keppel, Admiral of the Blue, for his long and faithful ſervices to this country; for his ready acceptance, at the call of his Sovereign, of the important charge of Commander of the Britiſh fleet in time of imminent danger; for the anxious attention that appears in every inſtance of his conduct to the ſafety of this country; for his judicious, able, and ſpirited behaviour on the 27th of July laſt, in his attack on the French fleet; for his glorious and gallant efforts to renew the engagement in the afternoon of that day; efforts rendered unſucceſsful through the want of obedience to his orders by the Vice-Admiral of the Blue; for the great protection given by him to our trade, to which entirely we are indebted for the ſafe arrival of the Eaſt and Weſt-India fleets; for his animating conduct and example, happily followed by ſuch ſignal exertion of ſpirit and intrepidity in the officers and ſeamen of the Britiſh fleet, as conveyed terror to our enemies, and obliged them to ſeek ſhelter in their own ports, by an ignominious flight.

Reſolved unanimouſly, That the Freedom of this City be preſented in a box made of heart of oak, with a proper device, ornamented and embelliſhed with gold, to the Honourable Auguſtus Keppel, Admiral of the Blue, as a teſtimony of the very high reſpect and gratitude which the members of this Court entertain of his long and faithful ſervices to his country. RIX.

Admiral KEPPEL's ANSWER.

"I receive, with the greateſt ſenſe of gratitude, the approbation which the City of London has been pleaſed to ſhew of my endeavours to ſerve my King and Country. The conſtitutional zeal which this great City has ever teſtified for the liberties of this kingdom, and for the ſucceſſion in his Majeſty's royal houſe, renders every mark of their regard a very high honour. I am happy, that the care of many excellent officers, and brave ſeamen, under my command, laſt ſummer, has contributed to the preſervation of their trade, which makes ſo large a part of the national intereſt."

CHARACTER of the COURT-MARTIAL.

MR. Burke, in the Houſe of Commons, declared, that from what he had ſeen of the Honourable gentlemen of the navy, his ideas, his admiration of, and his reliance on that body of men, was conſiderably increaſed, high as it had ever been, from what it was before. He never in his life ſaw ſo much true honour, true ſpirit, and true profeſſional independence, as what appeared in their conduct, and it was to him a ſubject of the greateſt triumph and conſolation, that at a time when Miniſters had practiſed every art to undo their country, we yet poſſeſſed ſo invincible a bulwark as the honeſt oaken heart of ſuch a navy. No part of their conduct appeared ſo amiable, ſo virtuous, and ſo manly, as the extravagant joy that burſt forth on the honourable acquittal of the

man

man they loved. So violent, ſo univerſal, and ſo uncontroulable was the rapture, ſo impetuous was the torrent that ruſhed from the heart, overwhelming the eyes, and drowning the ſpeech; that all pictured repreſentation, mimic exhibition, or even ideal conjecture, would fall infinitely ſhort of doing juſtice to. It was a ſight for men to wonder at, and Heaven to approve. It was the ſudden emanation of the ſouls of men, and did more towards pourtraying the features of the heart, than all that profeſſion could have pictured in the period of an age. He had read the fancied ſtories of romance, the fictitious tales of poets, and the ingenuities of men. He had ſeen the mimic repreſentation of rapture, and he had ſeen the ſhouts of joy in common life. But all he had ever read of ancientry, the ſtories of romance, the fables of the poet, the fictions of the drama, and the ſcenes of real life, fall as infinitely ſhort of that ſcene of grandeur and human exaltation, as the ſoul of man tranſcends the body, or as the Heavens are above the earth.

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PROCEEDINGS

OF

The COURT-MARTIAL held at *Portſmouth* on Admiral KEPPEL.

MINUTES of the COURT.

THURSDAY, *Jan.* 7, 1779.

AT nine o'clock this morning, Admiral Pye, as Admiral of the White, and Preſident of the Court-martial, hoiſted his flag on board the Britannia. At a quarter paſt nine o'clock the Union Flag was hoiſted in the Larboard Mizen Shrouds, as a ſignal for a Court-martial; and the Royal-Standard was hoiſted in the Starboard Mizen Shrouds, as a ſignal that the Court-martial was to be held on an Admiral.

At ten o'clock the Britannia fired a gun, and the Union Jack was hoiſted at the Fore-top-maſt-head, as a ſignal for all the Admirals and Captains in harbour to come on board.

At half paſt two the ſignal was obeyed. The Admirals and Captains going in their reſpective barges on board the Britannia.

The names of the thirteen ſenior Admirals and Captains, excluſive of thoſe ſummoned as witneſſes, were then called over; and with them the court was conſtituted. Captain Walſingham, who is a witneſs, finding his name not called, deſired to be informed of the reaſon. But an opinion of the Attorney and Solicitor-General, and Mr. Cuſt, the counſel for the Admiralty, on a caſe laid before them by order of the Admiralty, being read, and it appearing that they thought witneſſes diſqualified from being judges, Capt. Walſingham acquieſced.

The Court was then formed, conſiſting of the following members:

PRESIDENT, Admiral Sir Thomas Pye,

VICE-ADMIRALS Buckle and Montague,

REAR-ADMIRALS Arbuthnot and Roddam,

CAPTAINS,

Milbank,	Penny,	Boteler,	Duncan,
Drake,	Bennett,	Moutray,	Cranſton.

The members of the Court-martial being ſworn, the court was adjourned to the Governor's houſe. Being aſſembled there, the following charge was exhibited againſt Admiral Keppel, and read in court:

A Charge of Miſconduct and Neglect of Duty againſt the Honourable Admiral Keppel, on the 27th and 28th of July, 1778, in divers inſtances as under-mentioned.

I. "That on the morning of the 27th of July, 1778, having a fleet of thirty ſhips of the line under his command, and being then in preſence of a French fleet, of the like number of ſhips of the line, the ſaid Admiral Keppel did not make the neceſſary preparations for fight; did not put his fleet into a line of battle, or into any order, proper either for receiving or attacking an enemy of ſuch force; but, on the contrary, although his fleet was already diſperſed, and in diſorder, he, by making the ſignal for ſeveral ſhips of the Vice-Admiral of the Blue's diviſion to chace to windward, increaſed the diſorder of that part of his fleet, and the ſhips were in conſequence more ſcattered than they had been before; and whilſt in this diſorder, he advanced to the enemy, and made the ſignal for battle.

"That the above conduct was the more unaccountable, as the enemy's fleet was not then in diſorder, nor beaten, nor flying, but found in a regular line of battle on that tack, which approached the Britiſh fleet, all their motions indicating plainly a deſign to give battle, and they edged down and attacked it whilſt in diſorder. By this un-officer-like conduct, a general engagement was not brought on, but the other Flag Officers and Captains were left to engage, without order or regularity, from whence great confuſion enſued; ſome of his ſhips were prevented getting into action at all, others were not near enough to the enemy, and ſome, from the confuſion, fired into others of the King's ſhips, and did them conſiderable damage, and the Vice-Admiral of the Blue was left alone, to engage ſingly, and unſupported. In theſe inſtances the ſaid Admiral Keppel negligently performed the duty impoſed upon him.

II. "That, after the van and centre diviſions of the Britiſh fleet paſſed the rear of the enemy, the Admiral did not immediately tack and double upon the enemy with thoſe two diviſions, and continue the battle, nor did he collect them together at that time, and keep ſo near the enemy, as to be in readineſs to renew the battle, as ſoon as it might be proper; but, on the contrary, he ſtood away beyond the enemy to a great diſtance, before he wore to ſtand towards them again, leaving the Vice-Admiral of the Blue engaged with the enemy, and expoſed to be cut off.

III. "That, after the Vice-Admiral of the Blue had paſſed the laſt of the enemy's ſhips, and immediately wore and laid his own ſhip's head towards the enemy again, being then in their wake, and at a little diſtance only, and expecting the Admiral to advance with all the ſhips to renew the fight, the Admiral did not advance for that purpoſe, but ſhortened ſail, hauled down the ſignal for battle; nor did

did he at that time, or at any other time whilſt ſtanding towards the enemy, call the ſhips together in order to renew the attack, as he might have done, particularly the Vice-Admiral of the Red, and his diviſion, which had received the leaſt damage, had been the longeſt out of action, were ready and fit to renew it, were then to windward, and could have bore down and fetched any part of the French fleet, if the ſignal for battle had not been hauled down; or if the ſaid Admiral Keppel had availed himſelf of the ſignal appointed by the 31ſt article of the fighting inſtructions, by which he might have ordered thoſe to lead, who are to lead with their ſtarboard tack on board by a wind, which ſignal was applicable to the occaſion for renewing the engagement with advantage, after the French fleet had been beaten, their line broken, and in diſorder. In theſe inſtances, he did not do the utmoſt in his power to take, ſink, burn, or deſtroy the French fleet, that had attacked the Britiſh fleet.

IV. "That, inſtead of advancing to renew the engagement, as in the preceding article is alledged, and as he might and ought to have done, the Admiral wore, and made ſail directly from the enemy, and thus he led the whole Britiſh fleet away from them, which gave them the opportunity to rally unmoleſted, and to form again into a line of battle, and to ſtand after the French fleet. This was diſgraceful to the Britiſh flag, for it had the appearance of a flight, and gave the French Admiral a pretence to claim the victory, and to publiſh to the world, that the Britiſh fleet ran away, and that he purſued it with the fleet of France, and offered it battle.

V. "That on the morning of the 28th of July, 1778, when it was perceived that only three of the French fleet remained near the Britiſh, in the ſituation the whole had been in the night before, and that the reſt wore to leeward at a greater diſtance, not in a line of battle, but in a heap, the Admiral did not cauſe the fleet to purſue the flying enemy, nor even to chace three ſhips which fled after the reſt, but, on the contrary, he led the Britiſh fleet another way, directly from the enemy.

"By theſe inſtances of Miſconduct and Neglect, a glorious opportunity was loſt of doing a moſt eſſential ſervice to the State, and the honour of the Britiſh Navy was tarniſhed."

After this, Admiral Keppel requeſted, "that the Log-books of the ſeveral Maſters might be ordered to be delivered into court, and lie on the table for the inſpection of the members." At firſt Sir Hugh Palliſer objected to this, on the ground of its not being poſſible to authenticate them, until the Maſters were ſworn; but finding an inclination prevail to have them produced immediately, leſt they ſhould ſuffer any alteration, Sir Hugh waved the objection.

FRIDAY, *Jan.* 8, *and* SATURDAY, *Jan.* 9.

After the Court was opened, Sir Hugh Palliſer deſired that an oath might be adminiſtered to each Maſter, that the Log-book he

delivered was the true and original ſhip's Log-book,* without any alterations or additions ſince made therein. Court agreed. Maſters names read, and thoſe who had log-books ſworn, except Mr. Arnold, of the Robuſte, who refuſed the oath, ſome alterations and additions

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* By the Log-book is meant a public record of the moſt remarkable occurrences, of what happens in or about the ſhip; or when ſailing in a fleet, or in company with other ſhips, the obſervations made in regard to the ſhips in company, and particularly about the Admiral or Commander in Chief's ſhip, his ſignals, maneuvres, &c. The Log-book is the ground-work for all the journals kept on board the ſhip, to which every perſon on board (that keeps a journal) applies for information, and it is ruled in columns, in which are marked the diſtance ſailed, the courſe or point of the compaſs the ſhip was ſteered, and the winds that blew; and a large margin for inſerting tranſactions and obſervations.—By the Log-book every day begins (according to the common account) the day before at noon, i. e. the 27th of July by the Log-book, began the 26th of July at noon: Commanders in Chief, in *their detail of tranſactions*, mention the afternoon, *(or evening's)* tranſactions of a day; but it is never ſo regarded in what is called the ſhip's Log-book.—The ſhip's Log-book is kept on a board for that purpoſe by the different maſter's mates, in their reſpective watches, and afterwards entered down under the inſpection of the maſter. Sometimes the Lieutenants who have the watches, are ordered by the Captain to ſign their names on the Log-book for every time or watch they have the charge, in which caſe the mate of the watch brings him the remarks that are intended to be minuted down, before he inſerts them for *his* approbation; *he* then ſigns his name at the concluſion of the watch, as a voucher of its authenticity.—In time of action with an enemy, the Captain (if there is no Flag officer on board) takes the *whole* command upon himſelf; in that caſe, the minutes are always ſet down by the maſter, *with his* approbation, and every officer's obſervations are examined into, particularly thoſe made by the gentlemen appointed to obſerve ſignals, who minute down, *by a good watch*, every thing within their obſervation. And after once ſet down in the Log-book, it is conſidered a public record, and every alteration or eraſement as a forgery.

Extract from Byng's trial, as to the authenticity of Log-book evidence.

In the trial of Admiral Byng, Capt. Everit, on examination, looked at a paper in his hand.

Mr. Byng ſaid, I deſire the witneſs may be aſked, what that paper is.

Preſident. What is that paper? A. Minutes that were taken from the log, and from my journal.

Q. When did you take them? A. Since the action.

Q. Did you keep the log yourſelf? A. No.

Court cleared—and ſoon after opened, when a reſolution was read, that the witneſs might refreſh his memory with ſuch memorandums; when the unfortunate Admiral ſpoke as follows:

" I beg the Court will conſider that LOG-BOOKS are kept by various " people, and are liable to great miſtakes; and therefore remarks taken " from thence cannot properly appear in evidence.—Pleaſe to obſerve, he " founds his evidence upon the LOG-BOOK, and yet cannot ſwear the " LOG-BOOK to be true."

But, this as well as many other important matters, were not conſidered.

additions having been made; the captain thinking them not ſufficiently particular, they were facts he could not ſwear to. The log-book laid upon the table.

The Maſter being ſworn, Sir Hugh Palliſer aſked him, if his objection to ſwear to the log-book was on account of the alterations or additions? He replied, both.

Queſtions by Mr. Keppel. Were they made ſince it was known I was to be tried by a Court-Martial. A. I believe ſome of them were 10 or 14 days ago.

Q. By whom and by whoſe order? A. By the captain's order, copied by one of the mates.

Aſked, whether they were given in writing? A. Some were verbal, ſome in writing.

Q. Did you, upon the captain's requiſition, refuſe to inſert them yourſelf? A. No, I could not.

Q. Was there any officer preſent at the time? A. I believe the firſt lieutenant.

Q. Were they made by the uſual perſon that keeps the log-book? A. Yes.

Q. Where were the alterations made? A. In the great cabin of the Robuſte.

Q. Did the Captain ſee the log-book? A. The Captain ſees the log-book every day.

Q. Whether, after the action, the Captain approved of what was put into the log-book relative to that day's work? A. It was not inſerted in the log-book until it had received the Captain's approbation.

Q. Were the alterations for the 27th and 28th inſerted at that time by the Captain's approbation? A. The Captain frequently found it neceſſary to add to, or interline.

The Elizabeth, and Bienfaiſant, had no log-book.

Sir Hugh Palliſer deſired to have acceſs to the log-books out of court-hours. Mr. Keppel objected.

Court determined, "That Sir Hugh Palliſer was entitled to an "inſpection of the log-books after the riſing of the Court, if made "in the preſence of an officer, who ſhould be ſworn to the ſtrict "preſervation of their preſent contents."

Capt. Marſhall, of the Arethuſa frigate, ſworn. Allowed to look at his minutes. Examined by Sir Hugh Palliſer.

Q. When was the French fleet firſt diſcovered? A. On the 24th of July, about half paſt two o'clock. We did not ſee them ſo ſoon as other ſhips.

Q. Were the French fleet, during that afternoon, to the eaſtward of the Britiſh fleet, or how otherwiſe ſituated? A. I am not prepared to anſwer any queſtions previous to the 27th of July, but I will ſpeak to the beſt of my recollection. Q. How

Q. How did the enemy appear to be employed? Was it in forming their fleet into a line of battle? Or in what other way? A. I did not obſerve, being ſo much otherwiſe employed.

Mr. Keppel. "I think nothing can come as a charge againſt me but what relates to the 27th or 28th of July. But I have no objection to ſuch queſtions being aſked. If the accuſer does not go into them, I believe I ſhall."

Q. Between ſeven and eight o'clock in the evening of the 23d, how was the French fleet ſtanding? Was it to or from the Britiſh fleet? A. To the beſt of my recollection the Britiſh fleet had their larboard tacks on board, the French their ſtarboard.

Q. At eight o'clock did not the King's fleet bring to on the larboard tack per ſignal? A. Yes. [Admitted alſo by Mr. Keppel.]

Q. Was the wind about weſt by north, or weſt north weſt at that time? or how was it? A. At weſt by the log.

Q. What time or hour do you mean? A. From half paſt three to nine o'clock.

By the Court. This is mere log-book evidence. Capt. Marſhall ſpeaks only from his log. He anſwers no queſtions from his own knowledge.

Mr. Keppel. "I wiſh Capt. Marſhall were permitted to withdraw to recollect himſelf, that he may be able to anſwer theſe queſtions, as he came only prepared for thoſe that relate to what paſſed on the 27th and 28th of July." [Permitted to withdraw. After a little time called in again.]

Q. At what diſtance, and in what ſituation, was your ſhip from the Victory, at ſix o'clock in the morning of the 27th of July? A. My ſhip was nearly in her ſtation: Rather abaft the Admiral's beam, about three miles diſtant.

Q. Were not the ſhips of the Britiſh fleet at that time much extended, ſcattered, and diſperſed? A. Some ſhips of the Blue diviſion to leeward, and the Red diviſion rather to the windward, upon the weather quarter.

Q. Were there not ſome ſhips conſiderably to leeward, and others conſiderably to windward? A. In the morning they were.

Q. Was there a ſignal made by the Victory on the morning of the 27th of July, for ſeveral ſhips (particularly of the Vice-Admiral of the Blue's diviſion) to chace to windward? If you recollect this, ſay at what time? and for what ſhips the ſignal was made? A. Such a ſignal was made, but I did not repeat it.

Q. At what time was it made? A. I do not recollect.

Q. For what ſhips was it made? A. I know not. [Referred to his log.] It is not mentioned here, but I imagine the ſignal was for ſome ſhips of the Blue diviſion.

Q. In conſequence of that ſignal, did you obſerve ſeveral ſhips chacing? A. Some ſhips did chace. The number I know not.

Q. Did

Q. Did not that ſignal occaſion thoſe ſhips to be more ſeparated from their flag, and more ſcattered before? A. I cannot determine. I was to windward.

Q. As you was to windward, and as thoſe ſhips were chacing to windward, and you ſaw them chace, did it not cauſe them to be ſeparated, and more ſcattered than before? A. Certainly the ſhips that ſailed the beſt increaſed their diſtances the moſt. I don't pretend to ſpeak as to the fleet. I attended only to the flag.

Mr. Keppel. "I ſuppoſe he was employed in making minutes of ſignals, and he could not, of conſequence, attend to the fleet."

Q. Was not the Britiſh fleet then ſtanding on the larboard tack till there was a ſignal made for them to tack all together? A. Yes.

Q. At what hour was ſuch ſignal made? A. At half paſt ten o'clock.

Q. Soon after the Britiſh fleet tacked, was not the French fleet diſcovered to windward, approaching to the fleet on a contrary tack, in a regular line of battle, a-head? A. I did not obſerve either in a line of battle, or on a contrary tack, until juſt before the firing began a-head.

Q. When did you diſcover the French fleet in a line of battle? A. When they had their larboard tacks on board.

Admiral Montague. Did you ſee the French fleet in a line of battle before the engagement began? A. I imagine they were in line of battle before they tacked. I believe it was about nine o'clock in the morning.

Q. Did Admiral Keppel make the ſignal for the fleet to form into a line of battle, or into a line on any point of the compaſs the day before the engagement began? A. No, I think not.

Q. Was there ſufficient time for a line of battle to have been formed, from day-light before the engagement began? A. Moſt certainly. There was ſufficient time to have formed a line. Five hours.

Q. Did the King's fleet advance towards the fleet of France, without being in ſuch line or order? A. Yes.

Q. *from Admiral Buckle.* Was there a general ſignal for the whole fleet to chace at that time? A. Not that day. But I conſidered that we were in chace from the time we ſaw the French fleet, except when there was a ſignal for the line of battle.

Q. As the Britiſh fleet were not in a line of battle, or in any line upon any point of the compaſs, was it poſſible for us to engage ſhip to ſhip, from the manner in which we were engaged? A. It was impoſſible, ſome of our ſhips being ſo far to leeward.

Q. Did Admiral Keppel make the ſignal for battle, whilſt the fleet was without any line of battle, or any other line. A. Yes.

Q. *from the Preſident, Sir Thomas Pye.* Did Admiral Keppel make the ſignal for battle before the firing began? A. The firing began firſt.

Q. *from*

Q. *from the Court.* Did the French or Engliſh fire firſt? A. I do not know.

Q. Did you obſerve the Formidable after the engagement? and what ſituation was ſhe in? A. Diſabled, as ſome other ſhips were.

Q. Did you obſerve her wear and lay her head to the enemy? A. I did not obſerve her at the time of wearing, but her head was laid to the enemy.

Sir Hugh. Were not thoſe ſhips then a head of the Admiral, when they were ordered to chace, and on his lee bow? A. Some of them I believe were.

Q. Such of them as were of the Vice-Admiral of the Blue's diviſion, being in that ſituation and on the larboard tack, was not that the proper ſtation of that diviſion to be in readineſs to form the line of battle upon that tack, in caſe the ſignal had been made for them, that diviſion being to lead upon that tack? A. The Vice-Admiral of the Blue was to lead on the larboard tack.

Q. Were not ſome of the frigates and fire-ſhips expoſed to the enemy's fire, before they could get out of the way? A. I know not.

Q. Did any of the enemy's ſhot go over your ſhip, before you got out of the way? A. No, not till I was in my ſtation, abreaſt of the Victory, to leeward; and after I had brought to, and then I think we bore up twice a little out of the way of the ſhot, having no buſineſs there.

Q. Were any of the frigates and fire-ſhips then to the windward of the Victory, and a-head of you? A. There might be. I cannot be poſitive.

Q. What ſituation did you preſerve with reſpect to the Victory, when ſhe was going down along the rear of the enemy's line?—A. I endeavoured to keep on the Victory's beam out of gun ſhot.

Q. Was you in that ſituation when the Victory paſſed the laſt of the French line? A. I cannot be poſitive as to the exact ſituation. The Victory being in a ſmoke, I could only ſee her at intervals. I endeavoured to keep in my ſtation.

Q. When the Victory had paſſed the rear of the enemy's line, and had ceaſed firing, and the ſmoke was cleared up, did you then ſee her, and in what ſituation was you then from her? A. I ſaw the Victory certainly, but it is ſo long ago, I cannot recollect the exact ſituation of her.

Q. How long and how far did the Victory continue to ſtand after paſſing the laſt of the French fleet before ſhe wore? A. To the beſt of my recollection, a very little while.

Q. What do you mean by a very little while? A. I cannot confine myſelf to any time.

Q. Ten minutes? A. I cannot confine myſelf.

Q. As to diſtance, what will you pleaſe to ſay? A. I cannot aſcertain the diſtance.

Q. At

Q. At what time did the Victory wear? A. We repeated the ſignal ſoon after one, as it appears by my minutes taken down by the purſer. I never had the glaſs out of my hand.

Admiral Montague. Do you know from your own knowledge, what time the Victory wore? A. By my glaſs I ſaw the ſignal, and imagined it was ſoon after one.

Q. Was the ſignal for battle on board the Victory hauled down before or after ſhe wore? A. To the beſt of my recollection after ſhe wore.

Q. How long after? A. Not a great while.

Q. Have the minutes taken on board the Arethuſa, of the ſignals made, been examined and compared with thoſe taken on board the Victory? A. The minutes I have in my hand were taken by the purſer, and will be ſworn to.

Aſked again. A. They have not been compared with any other minutes, except ſeeing as to time, and there has been no alteration.

Q. Whether thoſe minutes you have in your hand, mark the time the ſignal for battle was hauled down? A. It was at 26 minutes paſt one in the afternoon.

Q. Did the Victory at any time ſet her top-gallant ſail that day? A. I do not recollect that ſhe did.

Q. Did you obſerve a ſignal from the Admiral for any of the Vice-Admiral of the Blue's diviſion to come into the Victory's wake? A. There was ſuch a ſignal.

Q. At what hour was it firſt made? A. At twenty-four minutes paſt three o'clock.

Q. How long did it appear to you to be flying? A. About ſix minutes.

Q. Was it hauled down? A. Yes.

Q. Was it hoiſted again; and at what hour? A. At ten minutes paſt ſix o'clock.

Q. The morning after the engagement, on the 28th of July, were not three of the enemy's ſhips in ſight? A. I obſerved three ſail, which I thought crowded ſail from us.

Q. Were they line of battle ſhips, or frigates? A. I cannot ſay.

Q. Was there any ſignal made by the Admiral to chace them? A. I think not.

Sir Hugh Palliſer declared he had done with Mr. Marſhall for that time; when Admiral Montague (to exculpate Admiral K. from the charge of running away from the enemy) put the following queſtion: "From the day you firſt ſaw the French fleet, to the time you loſt ſight of them, do you from your own obſervation or knowledge know of any act of the commander in chief, Admiral Keppel, behaving or conducting himſelf unbecoming of a flag officer?" Capt. Marſhall anſwered, NO, NOT ONE, AS GOD IS MY JUDGE.

Sir William Burnaby, Captain of the Milford frigate, was then called, and ſo far as he went in his evidence, it appeared, that on the night after we firſt diſcovered the French fleet, they might have got into Breſt, if they had been diſpoſed to avoid an engagement with us.

MONDAY, *Jan.* 11.

SIR *Hugh Palliſer* proceeding to examine Sir *William Burnaby*, relative to the operations and apparent diſpoſitions of the two fleets, from the time he firſt deſcried the enemy—Admiral Keppel obſerved, that, though he ſhould think it neceſſary himſelf to aſk a few queſtions reſpecting tranſactions previous to the 27th and 28th, which were the days to which the charge was confined, he did not think his accuſer ſhould be allowed to enquire into every thing that happened on the preceding days, when the enemy ſtood in ſight. The Court ſeemed, however, of opinion, that, if the priſoner was ſuffered to aſk ſuch a number of queſtions as he might, in the preceding caſe, judge neceſſary for the explanation of the affair of the 27th, the accuſer was entitled to the ſame indulgence; but to be more certain, one of the members propoſed to withdraw, as the Court was about to retire into another apartment for private deliberation. Sir Hugh Palliſer explained his motives for taking the matter up ſo early as the 23d; he ſaid he had charged the Admiral with not having made the neceſſary diſpoſitions for battle, as the enemy had not ſhown the leaſt diſpoſition to avoid an engagement from the time they firſt appeared in ſight of our fleet. The queſtion he meant to put eſtabliſhed that fact, which it would be impoſſible for him to do, unleſs he had the Court's permiſſion to examine evidence from the enemy's firſt appearance. The Court, after a conſultation, reſolved, that the accuſer, as well as the priſoner, ſhould have leave to aſk queſtions reſpecting the diſpoſition of either fleet from the 23d.

Sir William Burnaby then informed the Court, that when he firſt perceived the French fleet, about two o'clock in the afternoon of the 23d, they were to the eaſtward of our fleet, nearly a-head, or rather leeward, ſtanding towards us, and appearing to be in great diſorder: that the Milford having received orders from the Admiral to reconnoitre the enemy, he made towards them, and ſaw them ſtill in diſorder, keeping a little from the wind, and ſtill ſtanding towards the Britiſh fleet; their van, as he judged, being about ſix or ſeven miles from the van of the Britiſh. That at half paſt four he tacked and ſtood towards the Victory, the French fleet nearly then beginning to form a line a-head, ſeeming to direct their courſe to leeward of our fleet, and very little from the wind. It was very hazy, and late before he joined the Victory, and received orders from the Admiral to go a-head, and keep between the two fleets, and acquaint the Admiral if the enemy ſhould be ſtanding towards, or approaching us: he could not particularly obſerve their motions the reſt of the evening from the thickneſs of the weather, but he could

could ſee they were continuing to form their line, and ſteering the ſame courſe towards us, being to leeward of our fleet, their rear conſidered a-head of ours, their poſition upon our lee-bow on the ſtarboard-tack, and many of them indeed formed in line of battle, the wind then weſt and by ſouth; about half paſt eight o'clock, the Britiſh Admiral made ſignal for the fleet to bring to, and, to the beſt of his recollection, it continued in that ſituation all night.

Sir Hugh Palliſer then put this queſtion to the witneſs: The French fleet being to leeward of the Britiſh, and ſtanding ſouthward, at the ſame time our fleet lying-to, on the larboard-tack, with their heads to the northward, are you of opinion, that, if they were diſpoſed to avoid coming to an action, they would have continued upon that tack during that night, having the port of Breſt under their lee?—The witneſs anſwered, that he thought it very poſſible; but he judged they did not ſtand all night upon that tack; and aſſigned as a reaſon for this opinion, that at day-break he found himſelf a little to leeward of the French fleet, they being a-head, and to windward of us; but he agreed, that from the ſituation of the wind in the morning, and the relative poſitions of the two fleets, we had, in the courſe of the night, got between them and Breſt.

He was aſked by one of the Court, whether a ſhift of the wind in the night might not, without changing their tack, bring the French fleet into that ſituation in which he ſaw them in the morning, and upon which he formed his judgment, that they had not ſtood all night upon the ſame tack?—His anſwer was, that the wind had ſhifted to the north.

Being aſked, would that bring the windward or leeward? he heſitated a conſiderable time; upon which the Court deſired him not to give anſwer at hazard; and if he was not clear in the matter, to ſay at once that he did not know; which the witneſs did accordingly.

Upon further interrogations it appeared by his anſwers, that the French fleet were all that day forming in line of battle; that on the 25th and 26th the weather was ſqually, with freſh gales, which occaſioned ſuch a north-weſt ſwell, as is uſual with ſuch winds; that the French fleet kept the weather gage of us all the time, and he generally obſerved then his line of battle, and rather gained upon our fleet; ſometimes carrying a preſſing ſail, at other times under an eaſy ſail, for the better perfecting their line of battle; that during all that time, had they been ever ſo much diſpoſed to attack our fleet, they could not have done it without diſadvantage, as they could not without riſque fight their lee lower-deck guns, whilſt we could fight our weather lower-deck guns, or part of them at leaſt.

He was then examined as to the ſituation of the Britiſh fleet on the morning of the 27th; when he ſaid, they were ſomewhat diſperſed; that he remembers a ſignal made by the Admiral between nine and ten that morning for ſome ſhips to chace, and ſaw them crowd ſail accordingly, but could not ſay whether they were of

the Blue diviſion. That he did not perceive that the Admiral made any ſignal for the fleet to form into a line of battle a-head, or upon any point of the compaſs; that about eight o'clock, the French were in a regular line of battle; and that at half paſt eleven, when the Admiral made a ſignal to engage, our fleet ſeemed ſcattered. The French were pretty well formed all the morning, and the attack was begun by them; that both the fire-ſhips, the Proſerpine and Milford, were expoſed to the enemy's fire, before they could get out of the way; but he had no man killed, nor did he hear the others had; that our ſignal for battle was hoiſted about eight minutes after the firing began.

Being aſked whether, by the French fleet attacking the Britiſh, whilſt ſo diſperſed, and in no line, it was not impoſſible for us to engage ſhip to ſhip, or bring on a general engagement?—He anſwered, As far as my little experience in the ſervice can enable me to judge, I think it did.

Admiral Montague enquired of the witneſs, whether, if the Admiral had not advanced, he could have brought the French to action?—The witneſs replied, that he ſhould think not, if the French had been diſpoſed to get away; he believed, that if the French had lain to for us, the action would have been more general, but the French fleet abſolutely edged down, and brought on the engagement ſooner.

Being queſtioned reſpecting the time and diſtance that the Victory had paſſed beyond the French line, he could ſay nothing of the diſtance, but the time was five and twenty minutes before ſhe wore. He could not charge his memory exactly to the time the ſignal of battle was hauled down; but the Admiral being a-head of the enemy, he remembered his wearing again and ſtanding from the enemy upon the ſtarboard-tack, which tack the enemy was upon alſo; at that time the Admiral wore by ſignal; that a little after the action ceaſed, he obſerved the French fleet beat up their line of battle, and in confuſion, but not ſcattered: that the Vice-Admiral had before that time doubled on the rear of the enemy, and was to windward of them; that, to the beſt of his judgment, Sir Robert Harland, and his diviſion, could have borne down upon the enemy, then being to windward of them, had the Admiral advanced with the reſt of the Britiſh fleet, and kept the ſignal for battle flying, or if he had the ſignal appointed by the 31ſt article of the fighting inſtructions for the ſhips on the ſtarboard tack to take the lead; and that if the ſtated enemy had been ſo re-attacked in that confuſion by the Vice-Admiral of the Red bearing down, and the Admiral advancing, the enemy muſt have been prevented from forming the line ſo ſoon as they did, and finally, that they formed unmoleſted; but as a very young officer, he did not lay much weight upon the competency of his judgment.

The reſt of this evidence, which concluded the buſineſs of the Court at half paſt four, tended chiefly to prove, that the Vice-Admiral of the Red, and part of his diviſion, had occupied the ſtation in the Admiral's wake, which he had made ſignal for Sir Hugh Palliſer

Palliſer to get into; but Sir Robert was ordered by the Admiral, when he wore; had left the Vengeance a-ſtern about two miles, much diſabled, and in great danger of being cut off; he alſo remembered ſeeing three or four of the enemy's fleet next morning, which were not purſued by any of our fleet.

When the proſecutor had finiſhed, the Court put the following queſtion to the witneſs: "Whether, during the day of action on the 27th of July, to his knowledge, Admiral Keppel negligently performed the duty impoſed on him?" The witneſs anſwered, that it was a queſtion of great importance, far above him to determine, being ſo young in the ſervice. That no man had a higher opinion of, and a reſpect for, the worthy gentleman in queſtion.

On Sir William Burnaby's refuſing to give a more direct anſwer, the Court retired for ſome time. On their return their reſolution was read, that the queſtion ſhould again be put, when Sir Hugh Palliſer got up, and offering a written paper, deſired that his diſſent to their proceedings ſhould be read by the Judge Advocate. The Court would not liſten to this, and Sir Hugh beginning to read it himſelf, was ſtopped. The queſtion was again read, and Sir William Burnaby anſwered, who declared, "he did not think himſelf competent to ſay any thing more, but that he thought Admiral Keppel the braveſt and moſt gallant officer in the navy, and that he ſaid this from his heart."

TUESDAY, *Jan.* 12.

Croſs-Examination of Sir William Burnaby.

ADMIRAL KEPPEL.

DID you ſee the Vice-Admiral of the Blue, with ſeveral ſhips of his diviſion?—I was prevented by the intervention of Sir Robert Harland's ſhip.

They were not in the leeward of Sir Robert Harland?—There were different ſhips of the Red and Admiral's diviſions, which prevented my view.

Did the Vice-Admiral of the Red, in making ſail according to my orders, paſs to the leeward of the Vice-Admiral of the Blue?—I believe he did.

Did the Vice-Admiral of the Red, in getting to his ſtation a-head, paſs to the windward of the Admiral?—I think he did.

At what hour did you make obſervations that the Vengeance was in danger, as you have deſcribed her?—About five in the afternoon.

Had Sir Robert Harland then made ſail, or was he making ſail agreeable to the Admiral's orders?—I think he was making ſail.

Was your ſhip then as near to the Vengeance as to the Victory? At the time I obſerved her in danger, I think I was much nearer the Vengeance.

After

After Sir Robert Harland had at this time made ſail, how many ſhips in line of battle were in the Admiral's wake a-ſtern of him? I neither recollect their number nor their names.

Do you allow there were any?—There were.

Were there two?—Undoubtedly.

Was the Vice-Admiral of the Blue one?—I judged them to belong to Sir Robert Harland's or the Admiral's diviſion.

Where was the Vice-Admiral of the Blue when Sir Robert Harland interrupted your ſight of him no longer?—I think he was a-ſtern, and pretty well to windward. [In anſwering this queſtion he recollected himſelf, and gave it in other words, though with much the ſame meaning as at firſt. To this Admiral Sir Hugh Palliſer objected, and inſiſted that the firſt words ſhould be taken down. The Court however unanimouſly agreed, that if it was admitted in one caſe, it ſhould be in others, and it had been hitherto admitted to all to recollect themſelves.]

Was the Vice-Admiral of the Red, when a-ſtern a little to windward, cloſed in the line with the Admiral's rear?—I ſaid before, that at five he was a little to windward in the Victory's wake, cloſed very near ſome of them.

It was at this time when you was to leeward, and the Vice-Admiral of the Red cloſed in with the ſhips a-ſtern of the Victory, that he intercepted your view of the Vice-Admiral of the Blue?—I before ſaid that it was in paſſing to leeward from the Victory to Sir Robert Harland, that my view was interrupted; by what ſhips I did not point out; all contributed.

When you hailed the Queen, did you ſee the Vice-Admiral of the Blue?—I cannot ſay I did.

At this time was there a ſignal for a line, or a blue flag at the mizen-peak, or either flying?—I neither recollect, nor did before. I ſignified that I had not ſeen any alteration of the ſignal for forming the line on the ſtarboard tack.

If, at the time when the Vice-Admiral of the Red moved, the Vice-Admiral of the Blue had taken his place, would it not have given certain ſecurity to the Vengeance?—I ſhould judge ſo, if his ſhips were fit for action.

Did you then know whether they were fit?--I did not imagine ſo.

From three in the afternoon of the 27th till ſix, did you obſerve any Britiſh ſhips much to leeward before the beam, and on the lee-bow of the Victory?—I do not recollect any.

Did the Admiral on the 24th, when the French fleet were in view, call you within hail, and what orders did he give you?—He did call me, and bid me make ſail, and keep between the Britiſh and French fleets.

Did you ſee any motion that night that gave you reaſon to make a ſignal?—I did not.

Did

Did the Admiral purſue the French that afternoon by ſignal of the compaſs, and endeavour to cloſe with them?—I recollect your carrying ſail on the larboard-tack, and ſtanding toward the French with our van in tolerable order in line of battle.

Was it by ſtanding farther from the Admiral than the Queen, that you gained an opportunity of ſeeing the Vengeance?—It was.

Is there not an appointed ſignal when an Admiral would have able ſhips guard thoſe which are diſabled?—There is, but I neither ſaw nor knew of one being then made.

You have told the Court, that the Vice-Admiral of the Blue was well a-ſtern of the Admiral's wake; did you then notice the ſituation of the Formidable as to ſails and rigging?—I do not recollect her immediate ſituation; I think ſhe ſeemed diſabled.

Did ſhe appear equally as able to carry ſail as the Victory?—I think not.

Did not the Victory carry her top-ſails entire, and her fore-ſails at that time?—I have ſaid before I believed, during the greater part of the afternoon, ſhe carried her top-ſails and fore-ſails, but whether whole I cannot ſay.

Did you obſerve a ſignal from the Vice-Admiral of the Blue, that he could not accompany the Admiral?——No.

Is there ſuch a ſignal?——I think ſo.

Was the Victory a better ſailer than the Formidable?—From the obſervations I made of their ſailing, I think ſhe was.

As you ſay the Formidable was diſabled, and the Victory had advantage of ſail, do you ſuppoſe the diſtance between them was occaſioned by the Victory's ſailing, or a fault in the management of the Formidable?—I conceive it aroſe from the diſability of the Formidable, and the natural ſuperiority of the Victory.

When you paſſed near the Formidable, could not you ſoon have taken any meſſage from Sir Hugh Palliſer to me?—If a ſignal had been made to me for that purpoſe, I could ſoon have done it.

Sir Hugh Palliſer. Was not the condition of the Formidable apparent at that time?—Before then ſhe appeared diſabled.

Admiral Keppel. Was the top-maſt, top-gallant-maſt, top-ſail-yard, or lower-yard, of the Formidable, carried away?—[Sir Hugh Palliſer admitted they were not.

Captain Digby, of the Ramillies, being the next witneſs called upon, Sir Hugh Palliſer began to interrogate him reſpecting the buſineſs of the 23d; when Admiral Keppel begged the Court to take notice, that for the purpoſe of ſhortening the length to which he ſaw the trial would extend, if they ſtill went over the ſame ground, and queſtions were repeatedly aſked which he had admitted, he again told them, that he admitted that the French fleet put themſelves in order of battle when we diſcovered them.

Sir Hugh Palliſer. When the French fleet was to windward of the Engliſh, with the wind at weſt, was not Uſhant then under their lee?——*Capt. Digby.* It was.

What ſituation was the French fleet in the morning with reſpect to the Britiſh?—To the northward.

Had the French Admiral intended to have avoided coming to an action, would he not have avoided on the ſtarboard-tack in the night-time toward Breſt?—That is matter of opinion.

Had the French Admiral continued to ſtand on that tack all night, with the wind blowing ſtrong, as you have deſcribed, would they not the next morning have been near to the port of Breſt, and at a great diſtance from the Britiſh fleet?—They would have been nearer to the port of Breſt, and farther from the Britiſh fleet.

On the contrary, did not the French gain the wind of the Britiſh fleet, and thereby place it between them and Breſt?—They were to the windward the next morning, and of courſe we were nearer between them and Breſt.

Did you conſider theſe motions of the French Admiral as tending to avoid or come to an action?—I did imagine at that time the French fleet intended to come to an action.

You ſaid it blew hard in the night; what weather had you the next day?—More moderate.

From your recollection of its blowing freſh and ſqualling part of thoſe days, was it attended with ſea and ſwell, as is uſual to ſuch weather?—There was a ſwell, but not very particular.

Could ſhips have fought their lower-deck guns?—I could not have fought all mine moſt part of the time.

Had the French come down and attacked the Britiſh fleet at the time when the Britiſh fleet could not fight their lower-deck guns, would it not have been very diſadvantageous for us?—[Here it was objected to Sir Hugh Palliſer, that he had, as uſual, drawn concluſions very different from the evidence, and aſked his queſtions in terms inadmiſſable: ſuch an unwarrantable perverſion it was ſaid could not be tolerated. Inſtead of ſtating that the Ramillies could not fight part of her lower-deck guns, he had ſtated, that all the fleet could not fight all her lower-deck guns. In conſequence of this reproof, he altered his queſtion, and it ſtood, That whenever ſuch ſhips as the Ramillies could not fight her lower-deck guns, would it not have been, &c.]—That ſeems matter of opinion, and depends on their ſhips.

When the weather moderated, did it appear to you that the French Admiral crouded ſail to get away, or that he made and ſhortened ſail occaſionally, to perfect his line of battle?—I ſaw many of the ſhips ſhortening ſail and crowding ſail occaſionally, but after the firſt day I always thought they wiſhed to get away.

Did you ſee the French fleet bring to, in order for the Britiſh fleet to come up with them?—I don't recollect ever ſeeing the whole of the French fleet brought to at any part of that time.

Admiral

Admiral Montague. Did you ſee the Britiſh Admiral endeavour to get up to the French fleet, while they were forming their line? [Admitted by the proſecutor.]

In the morning of the 27th, was the Britiſh fleet much extended or diſperſed?—Much about the ſame as it was the day before in the morning, before the ſignals were made.

How were they the day before?—Not in the ſame ſort of order as when there had not been a line of battle.

Do you remember a ſignal being made that morning for ſeveral ſhips of the Vice-Admiral of the Blue's ſquadron to chace to windward?—I do.

How many were there?—I think there were four.

At what time did the Britiſh fleet tack all together, to ſtand toward the French fleet?—I think between nine and ten.

Did the Admiral make any ſignal for the Britiſh fleet to form into a line of battle that day before the engagement began?—[Admiral Keppel begged the houſe to recollect, that he had admitted this fact over and over again. He did not mean to form a line of battle till he had cloſed with, engaged, and paſſed the rear of the French fleet.]

Sir Hugh Palliſer. Did the Admiral make the ſignal for battle while the fleet was ſcattered and diſperſed?—[Here again the Vice-Admiral was called upon to attend to the words of the witneſs. The witneſs averred, he had never ſaid the fleet was ſcattered and diſperſed. The four ſhips indeed that were ordered to chace, were ſeparated. This Admiral Keppel ſaid he meant them to be, and hoped there would be found no more of theſe miſtatings. [He then ſtated the queſtion, when the fleet were thus ſeparated and diſperſed.]—I do not know what *diſperſed* means, but the ſignal was made when part of the fleet was ſo ſeparated.

In the courſe of the evidence, the witneſs denied that any ſhot had been fired near him, as ſtated by their own ſhips, through their irregularity, and ſaid he was ſo far diſtant, and ſo very much engaged, that he could not attend to the buſineſs of the day.

Admiral Montague. Captain Digby, you are an old officer, and have had the opportunity of ſailing with able and experienced commanders, I therefore deſire you will acquaint the Court, if, in any inſtance within your own knowledge, during the time the Britiſh and French fleets were in action, that Admiral Keppel neglected to do the utmoſt to burn, ſink, and deſtroy the enemy, having it in his power ſo to do, or negligently performed the duty impoſed on him? *Captain Digby, of the Ramillies.* I have always had the greateſt eſteem, and the higheſt opinion of Admiral Keppel, as an officer; I have ſo ſtill; but I have been giving evidence upon facts, and the anſwering that queſtion would be judging upon them, which I have no right to do.

Admiral Montague. In both articles of the charge, Admiral Keppel is charged with running away from the French fleet. Did you

 that

that day ſee him run away from them, inſtead of advancing to renew the engagement, " as he might and ought to have done," which are the words expreſſed in the charge?—[The charge was then read, and an objection ſtarted by Sir Hugh Palliſer to the queſtion, as contrary to law: Upon which Admirals Montague and Arbuthnot ſaid, they did not care ſixpence in this caſe for law; we come here to do juſtice, and hope, in God's name, it will be done.]

Admiral Montague. If Admiral Keppel ran away, Capt. Digby did ſo too; and I ſuppoſe every part of the fleet followed their leader. Did you that day run away from the French fleet?—No.

WEDNESDAY, *Jan.* 13.

Continuation of Captain DIGBY's *Evidence.*

ADMIRAL *Montague.* In the ſecond article of the charge againſt Admiral Keppel, it is ſtated, that he did not collect his ſhips together in the morning of the 27th, when the French attacked him: Was not the van and centre of the Engliſh fleet engaged as they paſſed?——A great part of them were.

Was the ſhip you commanded engaged?——Yes.

What was the condition of your ſhip?—Our main-top-ſail was cut to pieces, our ſtanding and running rigging very much cut, ſo that we were not able to wear for ſome time. The fore-maſt wounded in ſeveral places, and in one place it was cut one-half through. Several of the other maſts were wounded; the main-yard and main-maſts in particular.

Was the ſituation of your ſhip ſuch as you could have renewed the attack, if the Admiral had tacked immediately after the enemy?—I do not think my ſhip was in a condition to ſeek an attack for a good while.

How long after was it before you could have renewed the attack, if the Admiral had thought proper ſo to do?——It was near ſeven o'clock before I was able to tack. The lee-leech main-ſail being ſo cut, that I could not ſet it upon the other tack, which was neceſſary, on account of my being ſo far to leeward.

Was not you to have led the van on the tack, when the Admiral had led his head to the enemy?——No.

Did you tack?——Yes. [Admiral Keppel obſerved, that Capt. Digby, the day before, had ſaid, that though he was not in a condition to ſeek to renew the attack, yet, if an attack had again been made, he conſidered himſelf in a condition to ſupport it, there being a great deal of difference between attacking and being attacked.]

[It was remarkable, this anſwer had not been taken down by the clerk of the court, in theſe terms, which were acknowledged by Capt. Digby to be his. Mr. Gurney, ſhort-hand writer to the Admiralty, was in the ſame predicament. Admiral Montague expreſſed his reſentment

ſentment at this miſconſtruction, and inſiſted that the Captain's words ſhould now be properly taken down.]

Sir Hugh Palliſer now wiſhed to aſk ſome queſtions of the evidence; but as he on the day before cloſed his examination, it was decided he could not aſk any further queſtions till the Admiral had concluded his croſs-examination.

Admiral Keppel. What force of large ſhips did you, on the 23d, diſcover the French fleet to be compoſed of?——I could not count them.

How far was the Vice-Admiral of the Red and his diviſion from you at the lateſt period of the day?—As the fleet had been endeavouring to get into the line of battle, I was nearly ſo, though not got into my ſtation, in point of diſtance from the Vice-Admiral of the Blue; that will determine my diſtance from the Vice-Admiral of the Red.

That is not ſufficient. Can you ſay how far his diviſion was from you?—He was at one end of the line and I at the other, but the day was ſo hazy that I am not ſure I ſaw him.

Could Captain Digby, with a ſquadron of ſhips under his command, while the French were in the ſituation deſcribed on the 24th, 25th, and 26th, with ſuch weather, wind, and ſea, as he has deſcribed, and ſeeing an enemy of equal force, to the leeward, in the poſition he has ſtated, have heſitated one moment, on account of the weather, to have led his ſquadron down to battle?—*I think I ſhould not have heſitated.*

Can Capt. Digby inform the court of the relative ſituation of the Engliſh and French fleets, at day-light of the 27th of July?——As well as I recollect, we were both on the larboard-tack, the French fleet about ſix, ſeven, or eight miles to windward of us.

What was the ſituation of the Vice-Admiral of the Blue and his diviſion, with reſpect to the Victory at that time?——They appeared to me to be on the Victory's lee-bow, but I am not ſure.

What diſtance do you think they were from the Victory?——I cannot recollect.

Can you recollect what ſail they were under?—— cannot.

How was you ſituated in the Ramillies at this time, relative to the Vice-Admiral of the Blue and the Victory?——I have ſaid that I cannot recollect, but I remember to have ordered my officer to keep on the Vice-Admiral of the Blue's weather-beam, a mile at leaſt, and when I did take notice, he had kept ſtill farther.

What hour of the day was this, and where was you then with reſpect to the Victory?—On the ſignal being made for the ſhips to chace in the morning to windward, I ſet my ſtacing, and the period that ſtrikes me ſtrongeſt was juſt after we tacked, between eight and nine.

Was there any greater inclination when the ſhips were ordered to chace to windward, of the French intending to fight, than on the preceding day?——I think not.

Had the Admiral formed a line in the morning, muſt he not have bore down to join the ſhips to leeward, or have ſhortened ſail and

called back the red diviſion, and thereby have increaſed his diſtance from the French?—He certainly muſt have bore down, and many of the ſhips to windward, and would have in courſe increaſed his diſtance.

Can you inform the court the exact time when the French tacked from the larboard to the ſtarboard?—I cannot from my memory ſay the exact time, but I believe it was about three quarters of an hour before we tacked.

After the Engliſh fleet wore about from their ſtarboard tack, was there any ſort of change in the wind?—It favoured us.

When the wind favoured us, did you lay up to a part of the French fleet?———I did.

On what tack were the French when the engagement began?——On the larboard.

Did you know how they got upon that tack and when?—It was very thick, and I did not know.

Had you loſt ſight of them for any time?—I think we had.

When you diſcovered them again, were they upon the larboard?—They were.

Do you recollect how long it was, upon your diſcovering them again, before the firing began?——I was at breakfaſt in my cabbin about eleven o'clock, and did not ſee them on that tack, till my officer told me there was firing a-head.

Were the greateſt part of the Britiſh fleet, when they came to battle, in a ſituation ſpeedily to ſupport each other?——I could be no judge of the Vice-Admiral of the Red's diviſion. I know that where I was, I was ſupported by the Admiral and his ſeconds.

Can fleets on different tacks at any time fight ſhip to ſhip, with or without being in a regular line?—I think not.

You have deſcribed yourſelf to be near the Admiral, and ſupported by him, when you and the Engliſh Admiral were engaged with the French. Was that part of the French fleet in a regular line as you and the Victory paſſed them?—No.

Were any of them right to leeward of the others?——There were ſome of them a good deal ſo, but whether directly I cannot ſay.

Were there more Britiſh or French ſhips engaged cloſe, I mean engaged LIKE MEN, not at a diſtance?—My attention was ſo much taken up with my own ſhip, I could only obſerve thoſe juſt about me. I ſaw the Victory and a cluſter of ſhips about her.

At what hour in the afternoon of the 27th of July, did you firſt ſee the Victory on the ſtarboard tack, ſtanding to the ſouthward, after ſhe had paſſed the rear of the French?—I had not an idea of time after the engagement began.

Did you ſee her wear from the larboard tack to the ſtarboard?——I did not.

Admiral

Admiral Keppel. Time is the moſt material thing to aſcertain in the courſe of my duty towards my King and country on that day; therefore as Capt. Digby ſaid that he ſaw a cluſter of ſhips about the Victory, without knowing what ſhips or how many, I beg, I intreat, and demand of him to ſay, at what time that was?—Not long after the Vice-Admiral of the Blue had done engaging.

Did you ſee at what time the Vice-Admiral of the Blue had done engaging?—I was told ſo.

At what hour?——I do not know.

When you were to the leeward of the Victory on the ſtarboard tack, in any part of the afternoon from three to ſix, were there any other ſhips of the Britiſh fleet to leeward near you?—There were.

Being then deſired by the priſoner to ſay, Whether at any time from three to ſix o'clock in the afternoon of that day, he ſaw any ſhip to leeward of the Victory on the ſtarboard tack?

The witneſs anſwered, That there were four or five, beſides the Ramillies; he took two of them for the Robuſte and the Sandwich, but could not tell the names of any others; he thought he ſaw the Victory once during that ſpace leading down from the wind towards him, and theſe ſhips; but, from his extreme attention to his own buſineſs, he could not be certain; that between three and ſix, the ſhips which had been near the Ramillies, left her, one after another. It was within an hour of duſk, or leſs, when his officer reported to him, that the ſignal of battle was hauled down on board the Victory; he was juſt then wearing after ſtanding into the fleet; very ſoon after which, he got into his ſtation aſtern of the Vice-Admiral of the Blue, whoſe lights he kept ſight of all night. In the morning, at day light, he found himſelf near the Formidable, and had the Victory upon his lee-bow, about one or two miles off.

The next point of his croſs-examination was, reſpecting the eſcape of the three French ſhips in the morning of the 28th; he ſaid, that the wind that morning was weſt-north-weſt; the weather was more moderate than on the preceding day; but he thought it blew freſh, with ſqualls of rain, and a high ſwell. That it was a wind favourable for thoſe ſhips to get into Breſt.——And, ſpeaking of his own ſhip, ſhe was not, he ſaid, in a condition to chace, as a man of war ſhould chace, and to entangle himſelf upon a lee-ſhore, and an enemy's coaſt.

He recollected that ſeveral ſhips, his own amongſt others, made ſignals that morning, whilſt the Admiral lay with his head to the northward, that they wanted to put up their rigging.

Admiral Roddam. What were your reaſons for thinking that the French did not mean to come to an engagement after the firſt day?——Becauſe they might if they had choſen it.

Admiral Pye. Had the Engliſh Admiral formed the line on the 27th in the morning, would it have been in the power of any part of the Engliſh fleet to have brought on the engagement that day?——*I think not.*

Sir

Sir Hugh Palliſer. If the ſignal had been made for the line of battle, in forming it, would it have been neceſſary for the Admiral to have bore down to the wake of the Vice-Admiral of the Red's diviſion? And would not the Vice-Admiral of the Red's diviſion engage in that caſe, in like manner, as they did, excluding only the Duke, which was a long way to leeward?—Had the ſignal been made, the Red diviſion muſt have ſhortened ſail.

If the French had not intended to bring on the action, would they have tacked the ſecond time, edged down and attacked us in the ſituation we were in?——I have not ſaid that the French did not mean at that time to attack us, they did not appear to mean it in the morning.

[Capt. Digby begged leave to inform the Court, that he conceived the ſhort-hand writers did very wrong in catching at every word which he ſaid in explanation; that on many occaſions they ſet down words not ſpoken, cenſuring the queſtions and anſwers, and as the clerk took the minutes from them, when he was at a loſs, begged the Court to conſider whether this was to be admitted.]

Admiral Pye. The clerk is to receive no information from the ſhort-hand writers; the Court has no connection with them. He is to receive explanation from the mouth of the witneſs alone.

Sir Hugh Palliſer. Was not your ſhip one of my diviſion?——It was.

You deſcribe your ſituation in the action to be next to the centre. Were any other ſhips in the ſame diviſion, in the ſame ſituation, in conſequence of the ſignal to chace?—I do not know of any others.

You have deſcribed the ſituation to be ſuch that the ſhips could not ſupport each other. [Here Sir Hugh was reminded that Capt. Digby ſaid he could only anſwer for his own ſhip, which was ſupported by the Admiral and his ſecond.]

Sir Hugh Palliſer. If ſhips that chaced, and your ſhip, had engaged with the centre diviſion, would the other ſhips of the Vice-Admiral of the Blue's diviſion have been in a ſituation to ſupport each other equal to the reſt of the fleet?—I did not chace; and as I was a-head of the Admiral, when the chaſing ſhips engaged, as I believe they did a-ſtern of me, I do not know their ſituation; but that they were a good way to windward juſt before I engaged.

You have not ſaid what muſt have been the ſituation of the reſt of my diviſion?—I have not ſaid where the chaſing ſhips engaged; but if they all were ſeparated from their diviſion, they certainly could not ſupport it.

You have deſcribed, that the French fleet were not in a *regular* line of battle; did you obſerve one ſhip to leeward, and ſhot out from it by other ſhips cloſing, to windward of which one of our ſhips, ſuppoſed to be the Courageux, paſſed between her and the French line? Did you obſerve any other ſhip of the French fleet ſo far out of the line?—There was one ſhip to leeward of the reſt, but I cannot judge of the diſtance of the other.

Did

Did you obſerve that the irregularity of the French line was more than could have been expected from their having been engaged with the ſhips that paſſed before you?——There was an irregularity, but what it proceeded from I do not know.

Whether the Admiral, with his own diviſion, and that of the Vice-Admiral of the Red, and ſuch of the Vice-Admiral of the Blue's as had joined, did tack and double when the enemy did continue the action?—The Vice-Admiral of the Red, and his diviſion, paſſed to windward of me, juſt as I came out of action; but I believe the action was not renewed upon that tack.

Admiral Keppel. I have no objection to all theſe queſtions, but I conceive that the Vice-Admiral has no right to croſs-examine upon my queſtions. It miſleads the evidence, *though it cannot affect me*, and forces me to aſk new queſtions.

Sir Hugh Palliſer. Did the Admiral and the other ſhips with him renew the action?——I believe not.

Did the Admiral, with the whole of the ſhips, keep ſo near to the enemy as to be ready to renew immediately the engagement, when the Vice-Admiral of the Blue came out of it, or to ſupport him while he continued engaged?—I have already deſcribed my ſituation to be ſuch about that time, the fleet being between me and the French, that it was impoſſible for me to know how they were ſituated.

Whether you mean to ſay that the Admiral did ſo or not?

Admiral Montague. You muſt not interrogate a witneſs what he *means* to ſay. Aſk him to ſay Yes or No at once.

Sir Hugh Palliſer. Did he keep at ſuch a diſtance as to be able to ſupport me?—I do not know.

Admiral Keppel. I beg to know whether the Vice-Admiral has a right to croſs-examine upon my queſtions. He obliges me to make other queſtions, and to take up more of the time of the court than I wiſh to do.

Admiral Montague. He has no right ſo to do. It is unfair to the priſoner, unfair to the evidence, and tends to make him perjure himſelf, ſince it is impoſſible for him to recollect every word. I therefore beg that we may retire to decide on the propriety.

Before they retired, *Capt. Drake* aſked, Was it the favourable change of wind, for the Engliſh on the 27th, or the inclinations of the enemy to come to action?——I believe the favourable change of wind helped.

After being out about half an hour, the Court returned, having agreed that neither proſecutor nor proſecuted ſhall croſs-examine his own witneſs after he has been croſs-examined by the other ſide, with this reſerve, of calling the evidence in to *explain* any matter that may not be clear, but not otherwiſe.

Capt. Digby ordered to withdraw.

Admiral Keppel. I ſuppoſe, when I come upon my defence, I may call any witneſs I think proper?——*Court.* Certainly.

CAPTAIN WINDSOR, of the Fox frigate, was next ſworn.

Sir Hugh Palliſer. Did you receive any orders from the Admiral on the 27th of July in the evening?——Yes.

At what time?——A little before five.

What were thoſe orders?——The orders I received from Admiral Keppel were to ſtand towards the Formidable with the Admiral's compliments to Sir Hugh Palliſer, and to acquaint him, that he only waited for Sir Hugh Palliſer and his diviſion bearing down into his wake for him to renew the attack.

Did you commit thoſe orders when you received them into writing?——No, Sir.

From whom did you receive thoſe orders?—From Adm. Keppel.

Did you go on board to receive them, or was it by haling?—I did not go on board, I received the meſſage under the Victory's ſtern.

Was it from the Admiral himſelf?—Yes.

Have you had any converſation ſince with any perſon to refreſh your memory, as you did not commit it to writing?—No.

What time did you deliver your meſſage?—About half paſt five o'clock.

Do you remember whom you ſpoke to?——I repeated the meſſage twice to you (Sir Hugh Palliſer.)

In delivering the meſſage, did you abſolutely deliver thoſe words that the Admiral wanted me and my ſhips to join in the attack, or only MY *ſhips to come into his wake?*——I have *already* repeated to the Court the meſſage, word for word, as I delivered it to you.

What anſwer did I make?—That *you underſtood me very well.*

Did I not bid you inform the Admiral I had repeated his ſignals for the ſhips to bear down?—I did not hear any ſuch meſſage.

Were not a number of ſhips pennants flying on board the Formidable at that time?——I think ſhe threw out ſeveral pennants AFTER I had delivered the meſſage.

What ſails had the Victory ſet, when you received the meſſage?—I do not recollect.

What ſignal had ſhe flying?—I cannot charge my memory.

Do you remember your ſhips company giving three cheers to the Formidable?—Yes, in anſwer to three your ſhip gave to ours.

Did the Fox or Formidable give the firſt cheer?—The Formidable, I am ſure.

What diſtance was you from the Formidable, when you ſpoke to her?—So very cloſe, as to have our ſails becalmed.

Sir Hugh Palliſer. I have done with Captain Windſor.

Admiral Keppel. As Captain Windſor is in a lamentable ſituation (his arm being broke in the action) I ſhall not detain him now, but hope to have leave to call him when I am on my defence.

Admiral

Admiral Pye. Were there any ſignals flying on board the Admiral for the Vice of the Blue and her diviſion to bear down, before you received that meſſage, and at what time?—The diſtance of time was ſuch, I cannot recollect.

Admiral Montague. Did you ſee Admiral Keppel with the Britiſh fleet run away from the French fleet the day of the action, or the day after?—No.

Admiral Buckle being in a very bad ſtate of health, finding himſelf worſe, and not able to bear the fatigue, deſired to have that part of the act read, which makes it puniſhable by caſhiering any officer, who quits a ſhip from the time of the beginning to the finiſh of the Court-Martial; unleſs through illneſs, which the Court muſt be judges of. The act being read, a motion was made, that Admiral Buckle's attendance be diſpenſed with, which was agreed to. The Court then (at half paſt three o'clock) adjourned until ten o'clock the next day.

THURSDAY, *January* 14.

THE Court was reſumed at ten o'clock in the morning, and Capt. HOOD, of the Robuſte, was called upon and ſworn.

Admiral Keppel. Mr. Preſident, I know it is expected by ſome, that after the hiſtory which the Court had received of the alterations made in Capt. Hood's log-book, by his order, ſince it was known that my trial was to come on, I ſhould object to his evidence. But anxious as I am to hear the teſtimony of all that ſerved on board my fleet, reſpecting the operations of that fleet, I rather wiſh to hear Captain Hood's evidence.

Sir Hugh Palliſer. I beg Captain Hood to inform the Court, what thoſe alterations were, before he gives his evidence.

Capt. Hood. Mr. Preſident, before I proceed to give evidence, I beg leave to inform the Court of the nature, the ſum and ſubſtance of the alterations I directed to be made in my log-book. I never conceived that the evidence of a log-book was held to be ſatisfactory, or that it could contain any charge whatever. The winds, the courſes, the diſtances, in the Robuſte's log-book, ſtand unaltered.

The corrections are in the narrative part: and not knowing but I ſhould be called here as a priſoner, perhaps, and not an evidence, I was willing to have it correct.

I ſtand here an attacked man; from the 11th of Auguſt my character has been wounded. I have ſeen the abuſe go forth into the world reſpecting me; letters have been ſent to the firſt characters in the kingdom. In one paper, I was put under arreſt for diſobedience of orders; in others I was ſaid to be broke; anonymous publications have ſaid, that the rear diviſion was the cauſe of our not ſucceeding that day. I was very much alarmed, when, in a public aſſembly, the whole of the rear diviſion was blamed. I therefore thought it neceſſary to correct my log-book, for the honour and the

ſafety of the officers of that diviſion. I ſhall beg leave to call the maſter of the Robuſte to elucidate and clear up this matter; and I truſt that I ſhall not be found to have done any thing to the prejudice of the Honourable Admiral. I beg alſo to call Lieutenants Pitt and Lumley, who will produce the original log-books, and by them the Court will ſee what alterations have been made. I conceive, that a Captain of the navy has a right to alter and correct his log-book; and if that right is taken away, he is in a moſt deplorable ſituation; my honour, my reputation, and my exiſtence, depend upon it; and, I declare, that I will never ſet my foot on board a King's ſhip again, if it be not allowed.

Mr. Pitt and Mr. Lumley produced their log-books; and, on being called upon to take an oath of their being exact copies from the original log-book, they alſo owned they made ſome trifling alterations in the month of October.

The firſt queſtion by Sir Hugh Palliſer was then put,

What were the alterations you made in the log-book?—*Captain Hood.* The firſt alteration is in ſending out the ſhips to chace in the morning; my log-book firſt ſtated, "that the Vice-Admiral ſent out the ſhips to chace;" I altered it to, "that the Admiral made ſignal for our ſhip, and others, to chace." The ſecond alteration ſpeaks more fully to the Admiral's ſignals, in the afternoon, to wear down. The other alteration is the ſeeing the three ſhips, in the morning of the 28th, which was omitted in the original. The log-book before the Court, ſpeaks of the Robuſte's bearing down to her ſtation in the afternoon, and keeping as near to it as a diſabled ſhip could, the Admiral making much ſail.

Admiral Montague. What time was the ſignal made by the Admiral for the Vice of the Blue's to bear down in his wake, you being a diſabled ſhip can tell?—The evening.

Admiral Keppel. Where is the entry of the log of the 27th and 28th, of the Robuſte, as it ſtood originally?—Sir Hugh Palliſer objected to his aſking.

Sir Hugh Palliſer. What ſituation was the French fleet in the night of the 23d, with reſpect to the Britiſh fleet, and on what tack were they ſtanding?—The French fleet were to leeward, ſtanding on the ſtarboard tack.

How was the Britiſh fleet?—The Britiſh fleet was then laying too, on the larboard tack.

The French being on the ſtarboard tack, and to leeward, and the wind W. N. W. had not the French the port of Breſt under their lee?—They certainly had.

Did the Britiſh fleet continue to lay to all that night?—I think they did.

If the French Admiral had not intended coming to action, would he have continued upon that tack all night?—If the French Admiral's orders authoriſed him going into port, he certainly had it in his power.

Was,

Was, or was not, the French fleet the next day to windward of the Britiſh, thereby fixing the Britiſh between them and the port of Breſt?——The French was certainly to windward in the morning conſequently the Britiſh fleet was between them and the port of Breſt.

From theſe motions of the French Admiral, did you imagine he meant to avoid a battle, or that he meant to bring one on whenever wind and weather would permit him ſo to do?—From the motion of the French fleet, they indicated to my mind, their intention was to keep the ſea, of courſe he did not mean to avoid, and from the ſubſequent matter, I thought to engage the Britiſh fleet.

Endeavour to recollect the wind, weather, and ſea, on the 24th, 25th, and 26th, if, during thoſe days, you do not think it would have been diſadvantageous to the French, to have attacked the Britiſh fleet on account of the wind and weather, they muſt have fought their lee guns?—The wind and weather during thoſe days was ſqually, ſometimes rain; it was rather diſadvantageous for our fleet to have fought thoſe days, more particularly the French fleet, becauſe they muſt have fought their lee guns, being to windward, which they could not have done, I think, with any advantage.

In the morning of the 27th, was not the Britiſh fleet ſcattered, by which I mean, ſeveral ſhips of each diviſion being in various bearings and diſtances from their reſpective line?—I was not on the deck till after the ſignals were made from the Admiral for the Robuſte, and I think five other ſhips of the Vice of the Blue, to chace to windward, conſequently cannot ſpeak of the ſtate of the fleet before that period.

Did not that ſignal cauſe that part of the fleet to be more diſperſed and ſcattered than before?—I think thoſe ſix ſhips, the Robuſte and five others, chacing to windward, from, as far as I can recollect, between five and ſix in the morning until ten, carrying, during that ſhort ſpace of time, as much ſail as it was their duty to do, the ſignal being thrown out for them to chace, muſt of courſe encreaſe the diſtance from the centre of the fleet, and thereby may be ſaid to be more ſcattered and diſperſed.

Did not that ſignal leave the Vice of the Blue with four ſhips only?—The Vice of the Blue's diviſion conſiſted of ten ſail. I have given the Court an account of ſix being ordered to chace to windward by ſignal, conſequently there could remain but four with the Vice-Admiral.

What time did the Britiſh fleet tack altogether by ſignal?—I wiſh, in the courſe of the evidence I ſhall give this day, not to be confined to time preciſely, it being difficult to determine it. As near as I can recollect, the Admiral made the ſignal for the fleet to tack together about ten o'clock.

Did not the Victory begin to engage the French Admiral in the centre of their line?—The Robuſte chacing from the fleet that morning, threw her at too great a diſtance for me to judge of that event.

At what time did you ſee the French fleet in a line of battle that morning?——They began early in the morning to form; they were, I believe, completely formed between ten and eleven o'clock in the morning.

Did you ſee the Formidable come into action?—I ſaw her go into action, but I cannot tell preciſely what time.

Did you ſee ſeveral ſhips in the van of the French line fire at her, which ſhe did not return before ſhe began cloſe engaging herſelf?—I know that the French ſhips fired a great many ſhot at the Robuſte, which ſhe did not return before ſhe came cloſe enough to do execution. I judge the Vice-Admiral's conduct by my own.

Admiral Montague. Is that an anſwer to the queſtion? We do not decide from your judgment of the matter. Speak what you ſaw with your own eyes. Did you ſee any ſhot fired at the Formidable? that is the queſtion.——No. I did not ſee any, but ſuppoſe they did.

Admiral Pye. Did the Admiral go cloſe hauled when he ſtood from the enemy, or from the wind?—I believe he was cloſe hauled.

Were the whole of the Admiral and Vice of the Red on the larboard tack when the ſignal was made to wear?—I think the Admiral was on the larboard tack, I cannot ſpeak to the whole.

From the deſcription you have given of the Admiral and Vice-Admiral of the Red being to windward of the enemy with the body of the fleet about him, if inſtead of the Admiral being at two miles diſtance from the enemy, they had been as near as the Formidable was when ſhe wore and turned her head to the enemy after the action, would it not have then been a favourable opportunity to attack the French after they broke up their line?——I do not recollect making uſe of the word body. I ſaid many ſhips. If that number of ſhips I have deſcribed had been as near to the enemy as the Formidable, and the Admiral had thought that the ſhips *were in condition to* RE-ATTACK *the enemy*, it appeared to me to be a favourable opportunity for doing it.

If they advanced from the ſituation they were then in, do not you think that the French fleet might have been attacked and prevented from forming a new line of battle?—The ſituation of the ſhips being to windward of the enemy gave them an opportunity of attacking the enemy, provided the ſhips were in a condition, of which I cannot be a judge in my diſtant ſituation I can only judge of by poſition.

From the very briſk fire kept, and the very good behaviour of all our ſhips which did get into action, have you any reaſon to ſuppoſe, that the French fleet did not ſuffer in proportion to the Engliſh?——I had every reaſon in the world to believe that they did. I muſt conclude they did from the very briſk fire kept up by the Britiſh fleet. I judge they ſuffered in proportion.

Admiral Montague. Did you obſerve the maſts and yards of the French fleet as much diſabled as our's?—I do not recollect that either the Engliſh or French fleet ſuffered by their lower maſts being carried away. I cannot ſay how far they might be diſabled.

Admiral

Admiral Montague. Do you not think a ſhip may be ſo far diſabled, without any of her lower maſts being diſabled, as not to be capable of purſuing an enemy for ſome time?—Certainly.

Admiral Montague. You have ſaid that the Robuſte was diſabled after ſhe came out of the action. Pleaſe to relate to the Court the ſtate ſhe was in after the engagement; and how many hours, or what time it was before ſhe was able to purſue the enemy, provided the Admiral had thought proper ſo to do?——Shall I relate every particular?

Admiral Montague. I do not mean every brace and bowling, in which running rigging is included, but ſtate the material defects.—The Robuſte had one large ſhot through her mains, one through the centre of the fore-maſt, and another oblique, two in the bowſprit, one material one in the mizen-maſt, her main-top-ſail-yard was ſhot away, and her fore-top-gallant-maſt was ſhot in two. She received two ſhot in the mizen-yard, under and over water eleven ſhot, three or four under water, one very dangerous, thirteen in her upper-works. Her main-top-maſt was ſhot in two or three places, but not to prevent the ſhip from carrying ſail upon it. I cannot ſpeak the condition of her ſails, they were ſo much ſhot; moſt of her braces, bowlings, and running-rigging, were ſhot away; many of her lower and top-maſt ſhrouds. One of the ſhot between wind and water was a ſix-and-forty pound ſhot; it ſtruck the ſhip five or ſix feet under water, and took place directly againſt a hollow beam, in conſequence of which the ſhip made a great deal of water. I had given directions to wear my ſhip immediately on the Formidable's wearing, but the carpenter came and told the firſt Lieutenant, it was impoſſible to wear. I forgot to ſay, that two of her ſtern ports, on the weather-ſide, were ſhot away. My anſwer to that was, it was an evil I was obliged to ſubmit to, and I continued on the tack, my intention being to renew the fight along-ſide the firſt ſhip I could come at.

Admiral Montague. We wiſh only to hear the defects of your ſhip, Captain, and not a relation of your valour and intentions. It is foreign to the queſtion.

Sir Hugh Palliſer inſiſted, that the laſt part ſhould be put down to prove what might be done.

Admiral Keppel begged it might be ſo put down, though out of order.

Evidence continued. My firſt object was to repair the damages the ſhip had ſuſtained, there was a great deal of water in the ſhip, and the people were extremely alarmed. I ordered the carpenters over the ſide to ſtop the leak; I fancy it was about three or four o'clock in the afternoon before I could put my ſhip's head the other way.

Admiral Montague. How long was it before your ſhip was in order to renew the engagement?—There was much water in the ſhip, and the people were very much alarmed.

Preſident. What time was it before you would have been in a condition to renew the action?—It was full ſeven o'clock in the evening, or might be eight o'clock before the leak was ſtopped; I tacked my ſhip at four o'clock.

Were

Were your ſails and rigging at that time in a condition to renew the attack?—I ſhould certainly have renewed the attack as ſoon as my leak was ſtopped.

Capt. Duncan. In the condition your leak was in when you tacked, do you think your ſhip was fit to have renewed the attack?—I do not think ſhe was fit to fight in a line of battle.

Did you obſerve one of the French ſhips go away diſabled in her main-yard, attended by a frigate?—Admitted by Admiral Keppel, and that the fleet was one leſs.

Would the manner of the attack I obſerved on a former queſtion have required a purſuit, having ſtated the French fleet to have broke up their line, and their heads towards the Britiſh beginning to form a new line?—It depends very much upon the operations of the enemy's fleet.

Was not the enemy ſuffered to form a new line unmoleſted by the Britiſh, ſtanding after the Engliſh fleet?

Admiral Keppel ſmiled.

Sir Hugh Palliſer begged the Court to notice it.

Admiral Keppel. I beg the Court's pardon, I did ſmile, but will not again.

I don't recollect the time the enemy began to form a new line; in the evening I obſerved the enemy's fleet drawn up to leeward of us, but not in a well formed line, part of the rear appeared to me in ſome confuſion.

Admiral Arbuthnot. If the Admiral had thought fit to have renewed the attack when the French line was broke, could you have obeyed his ſignal, and gone down to the enemy in the condition you were in?—I could not.

Did not Admiral Keppel ſtand away from the enemy from the time he paſſed the laſt ſhip of the enemy's line, during the whole afternoon of the night of the 27th, except during the intervals of the ſecond time of his wearing in the afternoon?—I do not admit of two wearings after the Britiſh fleet wore to the ſouthward with the ſtarboard-tack on board, it continued the whole of the afternoon, and during the night the French were on the ſame tack.

Was not that as direct a courſe from the enemy as the wind would permit?—I take it the two fleets were ſteering on parallel lines, the Britiſh to windward, the French to leeward.

Were not the French at ſtarting a-ſtern?—Yes.

In the ſituation you have deſcribed the two fleets to be in on parallel lines, do you think the Britiſh Admiral was flying from the enemy or running away. I will have it in the words of the 4th charge, "had it appearance of a flight?"—At that time there was appearance of flight.

Was there, at *any* time of the day, any appearance of flight in the Britiſh Admiral?—*No.* There was no other period than the one

you have mentioned for aſking the queſtion; the former part of the day was purſuit.

In the anſwer you have given to the Vice-Admiral's queſtion, that the two fleets were on a parallel line, the Britiſh to windward, the French to leeward, did the French, in your opinion, chace the Engliſh Admiral, who was flying from them; and do you think that the French, when to leeward, crowded all the ſail they could to come up with the Britiſh Admiral, as the charge ſays, "*they purſued the Britiſh fleet, and offered it battle?*"—As near as I can recollect the poſition of the two fleets, about eight o'clock in the evening, or ſomewhere thereabouts; the Engliſh fleet to windward in that parallel ſituation I have deſcribed, were *endeavouring to form a line of battle*, and had been *endeavouring all the afternoon*. The ſignal was flying; the French fleet being to leeward, appeared to me to be doing the ſame at this particular time, which was the cloſe of the evening. The van of our fleet ſeemed to be advanced before the van of the enemy, and, as well as I can recollect, the Victory ſeemed nearly oppoſite to the van. Fleets in that ſituation cannot be ſuppoſed to be either chacing or flying.

Admiral Montague. When the ſignal was made for your ſhip, &c. to chace to windward, did you think you were to make the beſt of your way to the French fleet?—The chacing to windward increaſed the diſtance from our centre, and brought us nearer to the enemy.

Should you then, if the Admiral had given you no other orders, have engaged the enemy?—Not without his ſignal.

Did you ſee the Formidable cloſe engaged with ſome ſhips of the enemy a-head of the French Admiral in the beginning of the engagement?—I cannot ſpeak poſitively whom the Vice-Admiral began to engage.

Was not the Formidable as cloſe, and as long engaged as the Victory was?—I cannot ſay how long the Victory was engaged, but I can ſay I ſaw the Vice of the Blue engaged from the time he began until he paſſed the rear of the enemy's fleet.

Was not the Victory, when in action, ſupported by the whole of his own diviſion, and part of the Vice of the Blue's diviſion, which had joined them?—I take it for granted, that all the Admiral's diviſion did every thing that lay in their power to ſerve their flag.

Admiral Montague. Speak from your own knowledge, the taking it for granted will not do.—It is impoſſible, while in action, to ſee what other ſhips are engaged.

Was the Formidable ſupported by the whole of her own diviſion, part of her ſhips being gone in chace by ſignal?—No.

How many ſhips were in the ſtern of the Formidable?—I believe ſix; I cannot ſay any other.

How many ſhips remained a-ſtern of the Formidable while ſhe was engaged?—I cannot ſpeak poſitively to more than ſix; my ſhip was one of them.

Can you name any elſe?—The Terrible, Elizabeth, Egmont, Worceſter, and America.

Are

Are you certain with reſpect to the Egmont and America?—We were ſtanding upon different angles going down the line, I don't ſpeak exactly, the America I know was to leeward of me. I cannot certainly aſcertain the other.

Did the Admiral, with the van and centre diviſions, with ſuch of the Vice of the Blue's diviſion as had joined them, after paſſing the rear of the enemy's line, immediately wear and double upon the enemy, and continue the engagement?—I don't know, I did not ſee them, being engaged at that time.

Did the Admiral remain ſo near to the enemy as to be ready to have renewed the engagement, when the Vice of the Blue came out to ſupport him when in it?—I do not know.

When you came out of the engagement, how far was the Admiral diſtant from the French rear?—I judge the Admiral might be about two miles off the rear of the enemy.

Did you obſerve at that time which way his head was?—He was ſtanding towards the enemy.

When was the ſignal for battle hauled down?—According to time in my ſhip, about two o'clock.

Did you obſerve the Admiral unbend his main-top-ſail, while ſtanding towards the enemy? [*Admiral Keppel.* If it will ſave time, I admit that I did.]—I was informed he did.

Did you obſerve the Formidable, as ſoon as ſhe had paſſed the rear of the French line, wear and lay her head to the enemy?—— I did.

Was not the Victory and the body of the fleet ſtanding towards the Formidable and French fleet?—They were.

Did you obſerve afterwards ſome of the French ſhips wear and ſtand towards the Formidable?—I did not ſee the French ſhips wear at the time the Vice-Admiral alludes to.

Did you ſee them ſtand towards the Formidable?—Yes.

Did you obſerve her wear again, and lay her head towards the Victory?—I did not.

Did you ſee the Victory and Formidable meet?—No, I did not.

At the time you deſcribed the Admiral two miles diſtant from the enemy, ſtanding towards the French fleet, did the body of the fleet appear to be within him?—There were a great many ſhips with him, I did not count them.

Was that the time you diſcovered the Formidable, and how far was ſhe from the enemy?—The Formidable was a-ſtern of the rear of the enemy a ſmall diſtance, as appeared to me.

Was not the Vice of the Red, and his diviſion, at that time lying to windward of the enemy's rear?—At that time the Victory and Vice of the Red were to windward of the rear of the enemy.

Did you ſee the Admiral wear again and ſtand from the enemy? I ſaw the ſignal on board the Victory for the fleet to wear.

Did

Did they wear?—Yes, between two and three o'clock.

When the Admiral had wore, was the courſe he then ſtood from the enemy?—Yes.

Did you obſerve the French fleet break up their line, and become into confuſion?—They did break up, but at what time I cannot ſay.

Was it at or about the time the Admiral wore, or was it before or after?—To the beſt of my recollection it was AFTER.

EIGHTH DAY, FRIDAY, *Jan.* 15.

AT ten o'clock the Court was reſumed, when Captain Hood, of the Robuſte, was again called to the bar.

Admiral Montague. Did you ſee the French fleet to leeward on the morning of the 28th?——I did not ſee the French fleet to leeward on the 28th, except three ſail.

Admiral Montague. Did you ſee when the Admiral made the ſignal in the morning of the 28th for the three ſhips to be chaced, any ſhips that made a ſignal to ſet up their rigging?—I ſaw the flag for ſome ſhips to chace in the ſouth-eaſt early in the morning. I do not recollect at that time to have ſeen any ſignal for ſhips to ſet up their rigging.

How long then was the ſignal made to chace?—The ſignal was out a very ſhort time. I cannot ſay what time.

Did you ſet up that ſignal?—I did, and I fancy all the fleet made it.

Sir Hugh Palliſer. By the Admiral's ſhortening ſail, whilſt ſtanding towards the enemy, hauling down the ſignal for battle, wearing and ſtanding to the ſouthward, with the French fleet then a-ſtern, did you, or did you not, then conclude, that the Admiral had determined not to re-attack that evening?—I did not ſee the Admiral ſhorten ſail. I cannot pretend to judge of the Admiral's determination.

Have you ſince been of that opinion, from the various motions of the Admiral, and from the Admiral's letter publiſhed by authority?

Admiral Keppel. I beg pardon; I conceive that letter is to be commented upon by itſelf. Captain Hood is to give an account only of what ſtruck him at the time.

Preſident. The Court only are competent to judge of that letter, in my opinion.

[Sir Hugh Palliſer thought otherwiſe, and therefore the Court retired to determine on the point. After having been abſent a few minutes the members returned, and the Judge-Advocate ſaid, that the Court had agreed that the queſtion was improper to be put.]

Sir Hugh Palliſer. I ſhall beg the indulgence of the Court then, after I have produced and proved that letter to be the Admiral's, to aſk Captain Hood to this queſtion.

Admiral Keppel. Whenever that letter is produced, I ſhall admit it; and afterwards object to that queſtion being put to any witneſs; ſince they can alone judge, and they ought only to ſpeak, from what ſtruck them at the time, and not from what they may have gathered from ſubſequent materials.

Sir Hugh Palliſer. I ſhall then take the ſenſe of the Court whether I may not aſk ſuch queſtions.

Admiral Keppel. I ſhall then object to it.

Sir Hugh Palliſer then interrogated the evidence reſpecting thoſe ſhips not being chaced, which went to prove, that the ſhips were not in a condition to chace, as men of war ſhould chace upon an enemy's lee-ſhore, all, or moſt of them, having in the morning made ſignals for ſetting up their rigging. He ſaw the ſhips ſome miles to leeward, making ſail before the wind. He confeſſed that a ſignal was made in the morning to chace to leeward, but when it was ſeen that the fleet was in general diſabled in the rigging, the ſignal for chacing was taken down, and the Admiral laid his head to the northward, to give his ſhips an opportunity to repair.

Sir Hugh Palliſer. In the middle of ſummer, with ſhort nights and moderate weather, do you apprehend that there was any imminent danger if the fleet had chaced till they had ſeen thoſe three French ſhips, and the reſt of the fleet, into port?—I do not think there was any imminent danger, but the Admiral muſt be the beſt judge.

Captain Duncan. Was your ſhip, on the morning of the 28th, in a condition to have chaced as a man of war ſhould do?—The Robuſte, on the morning of the 28th, was not in a condition to chace.

Admiral Montague. Do you think, ſuppoſing the Britiſh fleet to ſail equally well with the Freach fleet, there was a probability of the Admiral's coming up with them before night, provided they had continued to fly from him?—I think not.

Admiral Montague. Suppoſing the Britiſh Admiral had chaced the French fleet, and ſeen them go into port, ſuppoſing himſelf to be within four leagues of the French coaſt, and a gale of wind had come on, would not the Britiſh fleet have been in great danger in the condition it was, making the enemy's coaſt a lee-ſhore?—I certainly think the diſabled part of the Britiſh fleet would have been in danger.

Admiral Montague. Had the French fleet, after the action of the 27th, when to leeward, continued to lay-to till day-light the next morning, do you not think that Admiral Keppel would have bore down and engaged them, provided the ſhips were in a condition ſo to do?—He certainly would.

Captain Cranſton. In the morning of the 27th, what was the Robuſte's ſituation with reſpect to the Victory and Formidable, when ſhe was ordered to chace?—I have ſaid, that I was not on deck till after the ſignal was made for the Robuſte to chace. I therefore can take that ſituation only from report.

Was you much to leeward of the enemy?——Not much, perhaps a mile.

Captain Duncan. By your having chaced to windward, did you not get ſooner into action than you otherwiſe would have done?—I believe not.

Had you been in a line of battle on the ſtarboard tack, and of conſequence in the Victory's wake, would you not have paſſed the enemy at a much greater diſtance than you did?—I cannot anſwer that queſtion.

Was the enemy's ſhore a lee one as the wind was on the 28th in the morning?——The wind was at W. N. W. on the morning of the 28th.

Was that, or was that not, a lee-ſhore?—It certainly blew on the Port of Breſt.

Croſs Examination by Admiral Keppel.

Admiral Keppel. Where is the entry of the Robuſte's log-book of the 27th and 28th, as it ſtood originally?—I really do not know.

Did you ſee any rough minutes of theſe two days tranſaction before they were entered in the log-book, and were they approved by you?—I certainly did ſee it in a rough manner, and not knowing, at that time, but it was correct, it was inſerted in the log-book.

Was it inſerted by your approbation?——I directed it to be wrote in the log-book.

When was it that the alterations and additions were made?—I do not remember the day, but the Maſter having been already before the Court, I ſubmit the day to his recollection.

As you cannot be preciſe as to the day, you can ſay, whether you then had heard of Admiral Keppel's intended Court-Martial?——When I took into conſideration the alteration and correction of the log-book, I had not heard of any intention that exiſted of trying Admiral Keppel.

When you ordered theſe alterations to be inſerted, had you not then heard of the intended Court-Martial?—I had not heard of Admiral Keppel's Court-Martial, *but it was rumoured here.*

Capt. Hood will be ſo good as to explain what he means by a rumour of a Court-Martial which he never had heard of?—What I mean by rumour is, a great many people were talked of to be tried in common converſation.

When theſe alterations were actually made, had you then heard of Admiral Keppel's intended trial or not?—I have already ſaid that I had not heard of Admiral Keppel's intended trial.

Capt. Hood has referred to what his maſter ſaid relating to thoſe alterations; may I beg to have the clerk's minutes on that article read?

It was accordingly done; and the minutes ſaid, "That, to the beſt of his (Mr. Arnold's) knowledge, the alterations were made in

the log-book after it was known that Admiral Keppel was to be tried by Court-Martial."

The minutes neglected one material expreſſion of Mr. Arnold's, which was within the recollection of all the Court. "I think the alterations were made (ſays he) twelve or fourteen days ago."—Captain Hood informed the Court, that it muſt be more, ſince he was in London, by public leave, twenty days, viz. from the 16th of December to the 3d of January. He then ſtated ſeveral reaſons for invalidating the evidence of log-books, till he was ſtopped, it being foreign to the ſubject.

The Preſident begged leave to remind Captain Hood, as he had appealed to him for the truth of his having been twenty days in London previous to the third of January, that if he meant to uſe *that* as a proof of his not having heard of the intended trial of Admiral Keppel, that before that time (that is, before he left Portſmouth on the 16th of December) it was known, though not officially, the trial was to come on.

Admiral Keppel. Then I am to underſtand, Sir, upon the oath you have taken, that you had not heard of my intended trial when you directed theſe alterations to be inſerted?—I believe I have anſwered that queſtion already.

I do not underſtand that you have; and I muſt beg of you to anſwer it now, ſtraight and direct.——I beg my former anſwer may be read.

The clerk recurred to the former queſtions and anſwers, beginning with the words "When was it that the alterations and additions, &c."

Admiral Keppel. I beg my queſtion may be again aſked. Am I to underſtand, Sir, upon the oath you have taken, that you had not heard of my intended trial, when you directed thoſe alterations to be made?—I had heard it as a common converſation, but no further.

Had you not heard, when the alterations and additions were inſerted, that Sir Hugh Palliſer had charged me with ſome offence?—I never heard of any charge, nor what the offences were. They had not come out to my knowledge.

Had you not then heard that Sir Hugh Palliſer had exhibited a charge againſt me, though you did not know the particulars of it?—I had heard there was to be a Court-Martial, therefore I knew there muſt be a charge.

Had you ever converſed or correſponded with Sir Hugh Palliſer, directly or indirectly, on the ſubject of Admiral Keppel's trial, before you made the alterations in your log-book?—I never converſed with Sir Hugh Palliſer on that ſubject.

Nor correſponded?—Letters certainly paſſed between us, but nothing relative to this charge.

Did you ever converſe or correſpond with him on the ſubject of the log-book?—Never.

Do

Do you mean to ſay that you never converſed or correſponded with Sir Hugh Palliſer on the ſubject of my trial, as well as on the additions to your log-book?—Never on the *additions to my log-book* till after the trial took place.

Was there nothing in regard to the trial neither?—At what time?

Before the alterations were inſerted in the log-book?—Nothing; not the ſmalleſt communication.

What then led you to diſcover, *four* months afterwards, any error in the ſtate of the tranſactions of theſe two days, which you did not diſcover at the time?—I was led to the diſcovery of the truth for the ſake of *myſelf*.

Did your original log-book ſtate that the Admiral was making much ſail in the evening of the 27th?—I do not recollect that it did?

Do you know that it did not?—I do know it did not. I have ſaid ſo before.

What hour does that inſertion in the log-book relate to?—It relates to the night.

What hour is it put to?—As far as I can recollect, it is put to part of the firſt watch, and part of the middle watch, but no hour is mentioned; it is in the courſe of narration. As I am called upon to declare, I will do it to the beſt of my judgment.

Admiral Keppel. Mr. Preſident, as that alteration in Captain Hood's log-book tends to affect my life, I ſhall aſk him no more queſtions.

Sir Hugh Palliſer here requeſted leave to offer a few words to the Court, in conſequence of what Admiral Keppel had juſt ſaid; and being indulged, he, in moſt virulent and violent terms, condemned what he called the Admiral's impeachment of Captain Hood's credit and character, and pledged himſelf to examine many witneſſes in the progreſs of the trial, to reſiſt, defeat, and confute, the cruel and invidious attack.

He was ſtopped in his career by the Court, who declared they could not ſit and hear it called a *cruel* and *invidious* attack in the priſoner, to aſk ſuch plain and ſtraight queſtions as were neceſſary to the inveſtigation of truth.

Admiral Montague ſaid, that he had heard no impeachment of Captain Hood's character whatever. The Admiral had ſtated a plain fact, which was acknowledged by the Captain, and that fact rendered him no longer eligible, however competent as a witneſs. The expreſſions of the accuſer might be proper for Weſtminſter-Hall, but they could not be tolerated in a Court-Martial.

Admiral Keppel ſaid, that he had aſked no indirect queſtion of the witneſs. The alteration had been made, and avowed *it tended to affect his life*, and therefore he rejected his further evidence. With the moſt feeling ſenſibility, and the tear burſting from his eye, he exclaimed, that his aſtoniſhment could not be expreſſed, when he firſt heard that his conduct on the 27th and 28th days of July was accuſed.

accuſed. He knew of no one that could prove the charges laid againſt him, and was ſo unprepared, that he had almoſt determined to ſet up a paper to the public, intreating all thoſe that could, to come and clear his innocence. He had, from that moment, prepared what evidence he could attain; and he hoped that his honour would come out unſullied. An involuntary burſt of applauſe ſpoke, with the trueſt warmth of expreſſion, how dear the character of that brave man was to the crowds that ſurrounded him, and how much they diſapproved of the accuſation againſt him.

It was determined that the ſpeech of Sir Hugh Palliſer ſhould not appear on the minutes.

The evidence was then aſked a few queſtions by the Court.

Admiral Montague. Upon the whole of the tranſactions of the Britiſh fleet on the 27th and 28th of July, did it appear to you, as an old and experienced officer, that Admiral Keppel did, on either of theſe days, tarniſh the honour of the Britiſh fleet?—Before I can give an anſwer to that queſtion, I muſt aſk the Preſident whether any part of my evidence is to be taken?

Your evidence is taken down, and ſtands part of the evidence.—I have long had the honour of knowing the honourable Admiral, and I ſtill reſpect him, notwithſtanding my evidence will not be farther requiſite. His character is above my praiſes. I have given my evidence, as far as it has gone, with honour and integrity. The Court muſt therefore judge and decide upon that queſtion.

Admiral Montague. I do not think that is an anſwer to my queſtion, it is a part of the charge againſt the Admiral, and I ſhould think that every Captain commanding the Britiſh ſhips on thoſe two days, can acquaint the Court, whether, by the miſconduct or neglect of Admiral Keppel, the honour of the Britiſh navy was tarniſhed?—The Court muſt know it from my evidence. I cannot be a judge.

Admiral Montague. Did you ſee him?——I have given my evidence.

Admiral Montague. Your evidence is to ſpeak the truth, the whole truth, and nothing but the truth, ſo help you God.

Captain Cranſton moved him to withdraw, which was accordingly agreed to.

Mr. Graham, purſer of the Arethuſa, was next called and ſworn. Sir Hugh Palliſer, perceiving he had minutes in his hand, queſtioned him concerning their authenticity and originality. Upon his examination it appeared, that the original log-book, made for the uſe of the quarter-deck, was loſt about three weeks after the action on the 27th, and that thoſe he produced were an exact copy as far as they went, of a copy truly taken from the original log-book: but that as Mr. Graham took them for his own ſatisfaction, and not for public inſpection, he had, the better to diſtinguiſh them from each other, entered the general ones, particularly as to their order, and alſo as to the time when they were made; but the pennants he had only entered in their rotation, as they ſtood in the original

ginal log-book. The juſtice of theſe minutes being thus aſcertained, a motion was made for reading them. This was oppoſed by Captain Duncan, who ſaid ſuch a proceeding would be informal, and contrary to the practice which had hitherto prevailed on the preſent trial, or at former Courts-Martial, but that the witneſs, when queſtioned concerning any matter contained in his minutes, might, to aſſiſt his memory, refer to them. Here the Judge Advocate alſo obſerved, that the reading Mr. Graham's minutes would anſwer no purpoſe, as they were undated.

Sir Hugh Palliſer then aſked Mr. Graham what was the firſt ſignal made on the 27th of July?—The firſt ſignal made was for tacking. I believe that was about half paſt ten in the morning; when I ſay it was made, I mean it was repeated on board the Arethuſa.

The examination was continued, as near as we could collect, in the following manner:

What was the next?——To engage, at five minutes paſt eleven.

Does the time the ſignals were hauled down ſtand in your book againſt them, or are they placed not againſt the ſignals, but apart?—They ſtand againſt the ſignals.

When was the ſignal to engage hauled down?—Twenty-ſix minutes after one.

What was the next ſignal, as it ſtands in your book?—A ſignal for wearing, two minutes after one.

What was the next?—A ſignal to ſpeak with a particular ſhip to come within hail, fifty minutes paſt one.

What ſhip's ſignal was it?—The Proſerpine.

The next?—The Union with a blue flag and a red croſs, one prior in order, though not in my book, to that for the Proſerpine.

When was it hauled down?—About twenty minutes paſt one.

When hoiſted again?—About thirty minutes paſt one.

When again hauled down?—On board the Victory I cannot ſay, but on board the Arethuſa at day-light next morning.

What was the next after the blue flag with a red croſs, for the line of battle?—A blue pennant, at thirty minutes paſt two.

What the next?—A yellow pennant at the main-top-maſt-head.

At what time?—I have not the time againſt the pennant.

What the next ſignal in order?—A ſignal for ſhips to windward to bear down into the Admiral's wake.

At what time was it?—Twenty-four minutes paſt three.

When was it hauled down?—At thirty minutes paſt three.

When hoiſted again?—Thirteen minutes paſt ſix.

When hauled down again?—At day-dawn next morning.

What was the next?——Union and blue flag, with a red croſs at the mizen-peak, for ſhips to windward to form a line a-head at cable's length; it was at thirteen minutes paſt ſix o'clock. What

What the next in order after twenty-four minutes paſt three?—A fellow pennant at the main-top-maſt-head, for the Proſerpine.

What the next?—A blue and white ſtriped flag at the main-top-head, thirty-three minutes after four, for a particular ſhip, I think, to make more ſail.

What ſhip's pennant was out?—A red one. The flag was hauled down directly.

What ſhip's ſignal was out; was there any?—I believe not.

Was the Duke's ſignal then out?—There were ſeveral pennants out when the Spaniſh flag was at the main-top-maſt-head, but none while the blue and white flag was out.

Do you recollect what ſhips pennants they were?—I can tell their order and colour, but not the names of the two ſhips.

When was the Spaniſh flag hoiſted?—Seven minutes paſt four.

What was the firſt pennant let fly afterwards?—A red one at the mizen-maſt-head; I don't know when, they were flying together.

What was the next?—A blue one at the ſtarboard mizen-topſail yard-arm.

Do you know the diſtance of the time between them?—No.

Sir Hugh Palliſer. In the original minute-book, was the time as well as names ſet down?——There was a column for it, but I believe the ſignifications were not inſerted.

Does it contain them in order?——The firſt was the blue one at the ſtarboard mizen-topſail yard-arm, and a yellow one at the main-topſail yard-arm.

Are they all mentioned in the original log-book?—Yes. There are two ſignals intervene between them, and ſeveral others which were flying with the Spaniſh flag.

Were the others, with their ſhips and times, aſcertained in the original log-book?—The times were, but I cannot ſay as to the names of the ſhips and their order.

Why have you omitted both the names and pennants that were out when the Spaniſh flag was flying?—I have given a reaſon for it, by ſtating the intervention of two flags.

What were thoſe two flags?——Two flags that were hoiſted by miſtake.

Can you name the pennants after thrown out?—Yes. A red pennant at the main-top-ſail, a blue one at the ſame place, the ſame at the larboard yard-arm, a white at the fore-top-maſt-head, a blue at the ſtarboard main-top-ſail yard arm, a red one at the ſame place, a blue one at the main-maſt-head.

SATURDAY,

SATURDAY, *Jan.* 16.

MR *Graham* was again called in, and produced the *firſt* copy he made from the original book of ſignals kept on board the Arethuſa, which book he yeſterday mentioned was loſt about three weeks after the action on the 27th of July.

Admiral Keppel. Have I ſeen you or your minute-books, or conferred with you about either of them?—You have not.

Ordered to withdraw.

Capt. ALLEN, of the Egmont, was then called by Sir Hugh Palliſer, as a witneſs in ſupport of the charge.

Sir Hugh Palliſer. When did you firſt ſee the French fleet?—I cannot juſtly ſay.

On the day when you firſt ſaw them, what time of the day was it?——Between two and three o'clock, I think.

During that afternoon, and in the evening, did they appear to you to be forming a line of battle?—No.

How were they ſituated with reſpect to the Britiſh fleet?—It is a long while ſince, and I cannot charge my memory with any thing of that ſort. My log-book and journal are at Plymouth.

Do you recollect their ſituation the next morning?—I do not.

Do you remember when you firſt ſaw them on the morning of the 27th?—I do.

About what time?—Near five o'clock.

When did you firſt diſcover them to be in a line of battle?—Not at all.

On what tack were they?—On the larboard tack.

At what time?—Between five and ſix.

Did they appear to you at no time to be in a line of battle?—No.

In the morning of the 27th of July, what was the ſituation of our fleet with reſpect to each other?—I cannot particularly anſwer; being far to leeward I could not diſtinguiſh the ſituation of the reſt of the ſhips to windward.

Do you remember the Admiral's making a ſignal for ſeveral ſhips of the Vice Admiral of the Blue's diviſion to chace to windward?—I do; but not how many.

At what time?—Near ſix o'clock.

Do you remember the names of any of the ſhips?—The Egmont was one.

Can you name any of the others?——The Terrible. I do not recollect any more.

Were their ſeveral pennants up?—I only recollect theſe two.

Did not a number of ſhips make ſail and chace at that time?—There might be three or four.

Did thoſe ſhips, whatever their number were, ſeparate and ſcatter that part of the fleet more than they were before?—They made a greater diſtance, no doubt, but they were not ſcattered.

Did they all preſerve an equal diſtance from each other while chacing?—No.

When did the French fleet tack from the larboard to ſtand to the ſtarboard?—I cannot aſcertain the time.

Preſident. When you ſaw the ſignal thrown out for thoſe ſhips to chace, what did you conclude, in your mind, was the cauſe of that ſignal?—To get to windward, and cloſe with the Admiral.

Sir Hugh Palliſer. When the French fleet tacked, did they tack together, or ſucceſſively one after another?—It is out of my power to tell.

At what time did the Britiſh fleet tack all together by ſignal?—The general ſignal was made at ten. I had tacked before, ſo they did not all tack together.

At what time was the ſignal made for battle?—I ſaw it a quarter after eleven.

What part of the French line did you begin to engage?—I engaged the third ſhip, but they were not in a line.

Were you at that time accompanied by any other ſhips of your diviſion ſo near as to be able to ſupport each other?—I was ſo attentive to my own ſhip, that I do not recollect any other than the Terrible, about a mile from me.

Was that a mile a-head or a-ſtern of you?——Aſtern.

How near was the ſhip next a-head to you?—I do not remember any other ſhip but the French man of war, there being ſo much ſmoke.

In that part of the engagement did you receive any damage?——We were too much engaged with firing on the enemy to attend to our own damage.

Do you not think the damage you received in that part of the engagement was greater than it would have been, if you had fought with the reſt of the Vice-Admiral of the Blue's diviſion?—No.

If you had engaged, in company with other ſhips, would not they have ſhared in the fire from the enemy, which was wholly levelled at you when alone?—That is as the enemy pleaſed. They might fire at *me* alone, or they might not have fired at *me* at all.

From the place where you began to engage, did you proceed till you had joined ſome other part of the Britiſh fleet, and was that your own or the Admiral's diviſion?—I did proceed, and joined the Admiral's diviſion.

Did you paſs a-head of the Admiral of your own diviſion?—No.

Did you paſs a-ſtern of him?——I did not.

In what ſituation was the Vice-Admiral of the Blue when you joined the Admiral?—He was a-ſtern on the *lee-quarter*.

Was he in that ſituation from you when he firſt began to engage? ——No.

How then?—Upon the lee-beam, about three miles and a half or four miles.

When you joined the Admiral's own diviſion, did you continue to engage there?——I did.

Did the confuſion which that part of the fleet was in occaſion ſome of our own ſhips to fire into your ſhip?—*I ſaw no confuſion at all.*

Was you fired into by any of our own ſhips?—I was.

By what ſhips?—The Thunderer.

What damage did you receive by her ſhot?——The ſheet-anchor was broke; two cutters were ſhot through; ſome other ſhot in the ſhip's ſide, but no men were either killed or wounded.

Was not your mainmaſt ſhot on the larboard ſide?——Not that I recollect.

Was it not underſtood at the time that a man was killed on the quarter-deck by the Thunderer?—No; it was proved he was killed by the French three-decked ſhip that lay along ſide of me. Give me leave to explain how I came along-ſide the Thunderer. It was no fault of Captain Walſingham*.

Did any other of our own ſhips fire over you, or into you, on that day?——No.

While the Thunderer and you lay in that poſition, did not the enemy's ſhot go over both, or hit both?—I cannot ſay that.

Were they within diſtance for the ſhot to reach or go over both?—I was within piſtol ſhot.

Was you at this time a-head or a-ſtern of the Victory?—Aſtern.

Did you proceed in the ſituation you were in, till you paſſed the rear of the enemy's fleet?—I did.

How far was the Britiſh fleet extended from van to rear, at the beginning of the engagement?—I do not know.

Was not the Victory while ſhe was in action, ſupported by the whole of the Admiral's own diviſion, and by part of the Vice of the Blue's?—I cannot tell that. There were many ſhips engaged

Can you tell who ſupported the Formidable when ſhe was engaged? ——I cannot particularize. There were three ſhips a-ſtern engaged, among which the Vice of the Blue was one.

After the Admiral, with the ſhips of his diviſion, and the others with him, had paſſed the rear of the enemy, did he wear and ſtand towards them?—He did.

At what diſtance from the ſternmoſt ſhip of the enemy did he wear? —I cannot aſcertain the diſtance, it *was not far.*

* The Court were perfectly ſatisfied it was not, and did not deſire to hear the reaſon, ſince ſuch a circumſtance is ſo common in large fleets.

How long was it after he had paſſed the rear-moſt ſhip?—That I do not know neither.

Did you continue to ſtand beyond them longer than the Admiral, or the ſame time?—I continued on the ſtarboard tack till ſix o'clock in the afternoon, having four feet water in the hold, which obliged me to do ſo.

From the very briſk fires kept up by our ſhips that were engaged, do you think that the French ſhips were not damaged at leaſt as much as ours?—I can anſwer for no ſhips firing but my own; neither can I ſay what damage the enemy received.

Do you not think the damage on their ſide was in proportion to ours?—That I cannot ſay. I have reaſon to ſuppoſe there muſt have been damage.

After you ceaſed firing, did you take notice of the Vice-Admiral of the Blue, and your own diviſion?——Not till ſix o'clock the ſame evening.

Did you ſee the Victory when ſhe wore?—I have already ſaid I did not ſee the Victory wear.

Did you ſee the Vice-Admiral of the Blue at that time?—No.

When was the ſignal for battle hauled down?——I cannot immediately ſay.

Can you ſay whether it was before or after the Admiral wore?—I cannot.

Did you not ſee the Admiral unbend his main-top-ſail?

Admiral Keppel. That has been admitted again and again; if the accuſer will ſtate at what time he alludes to, I will agree or not agree to it.

Sir Hugh Palliſer. When ſtanding a ſecond time to the enemy?

Admiral Keppel. I did unbend it.

Where was the Vice of the Red, and his diviſion, about that time, while the Victory was ſtanding towards the enemy?——I was ſo attentive repairing my own damages, that I cannot immediately ſay.

Did you ſee the Victory wear the ſecond time?—By the ſame rule, I did not.

When did you firſt ſee him with his head to the Southward?—— Between four and five o'clock.

Was there a number of ſhips about him at that time?—There was.

Did you take notice when the French broke up their line?——I did not perceive them in any line, as I have ſaid before.

Did you obſerve them to be in a crowd different from what they had been during the action?——I did not ſee them in a crowd at any time, before, during, or after the action.

Did you obſerve when they began to form a line of battle with their heads to the Southward?——I did not.

Was

Was the Vice of the Blue, and part of his diviſion, the ſhips that laſt came out of the action?—I cannot tell.

Admiral Keppel. I do admit it; he muſt be the laſt that came out of action, from his ſituation in it.

When the Victory wore the ſecond time, did ſhe ſtand to the ſouthward?—I did not ſee the Victory wear a ſecond time, but between four and five o'clock ſhe was ſtanding to the Southward.

Was the French fleet then a-ſtern?—No, they were not.

Where were they?——They appeared to me, the greateſt part of them at leaſt, a-breaſt of the Admiral, to leeward.

At what time are you ſpeaking of?—About ſix in the afternoon.

Did you obſerve what ſail the Victory had during the afternoon?——I was in ſuch poſition as not to be able to judge.

Did you ſee the blue flag at the mizen-head hoiſted that afternoon, for Sir Hugh Palliſer's diviſion to come down into his wake?—I did.

About what time?——About five o'clock in the afternoon; I cannot be particular.

Was your ſhip then to leeward of the enemy?——A-head, and to leeward withal.

At the time you mention that you ſaw the French fleet at ſix o'clock, were they forming in a line of battle?—They appeared to me to be forming.

Did the Vice-Admiral of the Red bear down into the Admiral's wake that afternoon?—I did not ſee him bear down. He appeared to me to be a-head of the Admiral.

Before that happened, did you not take notice of his being a-ſtern of the Admiral?—I did not.

What time that afternoon did you get to windward of the Victory?—I tacked at ſix o'clock at neareſt, and was to windward of the Admiral a little before ſeven.

Did you obſerve that afternoon a number of ſhips pennants out to bear down, and your's among the reſt, on board the Victory and Formidable?—I did.

Where was your ſhip at that time, with reſpect to the Formidable?——To windward.

At what time was that?——Near ſeven o'clock.

Did you obſerve the Fox frigate come to the Formidable?—I did not.

After you had made ſail in conſequence of that ſignal, and your pennant being hawled in, did you again bring to?——I did; for we had much water in the hold at that time, going too faſt for the people overboard to ſtop the leak.

Did you obſerve any ſignals made in the night by the French fleet, or were you informed of it at the time?——I ſaw ſome rockets

rockets thrown, which I apprehended were ſignals for ſome of the French ſhips.

Did you perceive them from that time to go away?—No, I did not.

Were they, or part of them, in ſight the next morning?——I ſaw three ſail between three and four o'clock in the morning of the 28th.

Was there any more ſeen from your ſhip's maſt head, ſuppoſed to be French ſhips?—I neither was informed or did ſee any more than the three ſail.

What did you judge thoſe three ſail to be, line of battle ſhips or frigates?——I judged two to be line of battle ſhips and one frigate, but in that I may be miſtaken.

How far do you think thoſe ſhips were from the Britiſh fleet?—They might be ſix miles.

Do you ſpeak of them all, or the fartheſt of them?—The neareſt of them.

Do you mean at day light when you firſt ſaw them?——I do.

Whereabout was the Egmont at that time, with reſpect to the reſt of the Britiſh fleet?—About four miles a-ſtern of the Vice of the Blue, to windward of the Admiral and the reſt of the fleet.

Were not thoſe three ſhips nearer to the Britiſh fleet than they were to the Egmont?—I think they were, and to leeward.

What latitude was your ſhip in at noon of the 28th by reckoning?——That the log-book and journal will aſcertain.

What was your diſtance from Uſhant that day?—I do not know; the log-book muſt tell you.

What kind of weather was it that morning?—As near as I can recollect it was hazy.

As to wind?——It blew freſh.

Croſs Examination by Admiral Keppel.

Admiral Keppel. At the time the ſignal was made for the Egmont, and other ſhips of the Vice of the Blue's diviſion, to chace to windward in the morning of the 27th, can you recollect what ſail the Vice-Admiral of the Blue was under?—As near as I can, the top-ſails, and foreſails, and the fore-topmaſt ſtay-ſail. The poſition the Egmont was in, being a-head, I cannot recollect ſeeing whether ſhe had her main-ſail, and main-topmaſt ſtay-ſail, or not.

As an officer of experience, when a ſignal is made for your ſhip, or any ſhip, to chace to windward, does it direct you to ſtand on the ſame tack you ſet out on five hours, or to tack, and ply to windward in the wind's eye?—No, it does not, but to ply to windward.

I think you ſaid you did tack before the general tack. I aſk you whether, if the other ſhips had tacked as ſoon as you, they would not have come to action as ſoon, and given you ſuccour; and whether their ſtanding much longer time the ſame tack, if they were ſcattered and extended, were not the cauſe of their being ſo; or was it the fault

fault of the ſignal to chace to windward?—There is no doubt but, had the ſhips tacked as I did, they might have been in action as ſoon the Egmont. It was not the fault of the ſignal to chace to windward.

Then, if they had got into action as ſoon, or nearly as ſoon, and had bore down and cloſed with the centre diviſion as the Egmont did, whether that would not have given ſtrength to the centre diviſion, and to the diviſion a-ſtern of it?—Undoubtedly it muſt.

I think Captain Allen has deſcribed himſelf to have been at the time he was in action, joined with the centre diviſion, the Vice-Admiral of the Blue and two other ſhips of his diviſion a-ſtern of the Egmont; the ſituation the Egmont was then in, did it not give ſuccour and ſtrength to the Vice-Admiral of the Blue?—IT DID.

Some ſtreſs has been laid on the Thunderer's firing into, over, or at the Egmont. I aſk you whether, in ſo large a number of ſhips following one another, that will not happen in all engagements, in ſome degree, when ſhips are ſo engaged and ſo obſcured from one another by ſmoke?—It often happens in great fleets unavoidably.

You ſay you ſtood upon the ſtarboard tack till ſix o'clock in the afternoon repairing damages, and that you ſaw the Victory on the ſame tack between four and five. Did you ſee the Victory leading, at that time, two or three points from the wind down upon the ſhips to leeward?—I did obſerve it, and judged it was to ſuccour the diſabled ſhips that lay repairing a-head and to leeward of the Britiſh fleet.

Was the Victory's ſtanding two or three points from the wind, nearing or going from the enemy's fleet?—It was nearing the enemy's fleet, and they appeared to me to edge away alſo.

Can you ſay what other of the Britiſh ſhips, between four and five, were to leeward, on the lee-bow of the Victory, about the Egmont, in the ſame condition with himſelf?—There were four ſail beſide the Egmont to leeward.

When you joined the Vice-Admiral of the Blue, about ſeven o'clock, did you then ſee the ſignal on board the Victory for the line of battle a-head, and the blue flag under it* ?—I did.

Had you ever ſeen it before in the courſe of the afternoon?——I had.

When you was to windward, at ſeven o'clock, of the Vice-Admiral of the Blue, did you ſee him with the ſame ſignals out as the Victory?——I only ſaw the ſignal flying for bearing to the Vice-Admiral's wake with my ſignal.

I would aſk you, whether in the condition your ſhip was in after the action, and in the morning of the 28th, you was fit to chace like a man of war, and to entangle yourſelf on a lee-ſhore, on an enemy's coaſt, without being in imminent danger?—She was not in a condition to chace, much leſs to be entangled on a lee ſhore, on an enemy's coaſt.

Admiral

* In bearing down to the Victory.

Admiral Montague. You will pleaſe to acquaint the Court of the defects of the Egmont after the engagement, with reſpect to her maſts, yards, ſails, rigging, and hull.

I muſt beg leave to refer you to the defects given in to the Commander in Chief the morning after the action. They are really too long and too numerous for the Court to attend to.

Admiral Montague. We only wiſh to hear the principal defects.

We received ſix ſhot between the lower part of the whale on the ſtarboard ſide, and five ſtreaks below that; the head of the main-maſt had two or three ſhot through it; the mizen-maſt ſhot totally away; the head of the mizen-maſt had two ſhots; the crotchet and mizen-top ſail yard, the main-yard, and the ſtarboard yard-arm, ſhot through; one ſhot through the ſlings of the main-yard, one ſhot through the larboard, and the moſt of the larboard and yard-arm ſhattered. The head of the fore-top-ſail ſhortened, the fore-yard ſhot through in two places, the fore-maſt and main-top-ſail yard ſhot through, one ſhot through the centre of the foremaſt, the head of the foremaſt much ſhattered, and the main-ſtays.

The Court are ſatisfied with theſe defects that your ſhip was diſabled. Leave off here, and tell us

What time was it (how many hours after) before your ſhip was in a condition to renew the engagement, if the Admiral had thought proper ſo to have done?—Three hours and a half.

Then, Sir, was it not more proper, and prudent, in the Admiral, to lay to and repair his diſabled ſhips before he renewed the attack, than to have returned to the engagement immediately?—Aſſuredly it was.

Then Sir, upon the whole, did it appear to you, as an old experienced officer, that Admiral Keppel did, by his conduct either on the 27th or 28th of July, tarniſh the honour of the Britiſh navy?—No; and I ſhould not take upon me to ſay thus much if I had not been forty years at ſea, and three and thirty years an officer. I look upon it the Admiral did *behave with much Honour, inſtead of tarniſhing the Britiſh Flag!*

Tenth Day, MONDAY, *Jan.* 16.

WHEN the Court was expected to open this morning, as uſual, the Judge Advocate reported, that Admiral Roddam had been taken ill, and Dr. Johnſon, his phyſician, was of opinion, that it would be unſafe for him to attend the Court; and, as one day's abſence would preclude him from giving a vote in the diviſion, the Preſident and the reſt of the Members, unwilling to loſe the aſſiſtance and advice of ſo able and experienced an Officer, had therefore reſolved to continue the adjournment till the next morning.

ELEVENTH DAY, TUESDAY, *January* 19.

AT ten o'clock the Court met, agreeable to adjournment, when Mr. Caſſey, maſter's mate of the Arethuſa frigate, produced a copy of the minutes from that ſhip's log-book of the tranſactions of the 27th and 28th days of July. They contained an accurate relation of the ſignals, which, as they are exactly the ſame as thoſe of Mr. Graham, we do not think a repetition would either pleaſe or be neceſſary to the public in point of information. Sir Hugh Palliſer queſtioned him narrowly as to the authenticity of the minutes, which being fully aſcertained, they were produced, and make a part of the evidence.

CAPT. ROBINSON, of the *Worceſter*, was then called and ſworn.

Queſtions by Sir Hugh Palliſer.

When was the French fleet firſt ſeen?——On Thurſday, the 23d of July.

At what time?—I believe about one o'clock.

During any part of that afternoon, did they appear to you to be forming a line of battle?—There was an appearance of it, but I cannot be certain.

On what tack was the French fleet at duſk that evening?—I believe on the ſtarboard tack, ſtanding to the ſouthward, rather towards the Britiſh fleet.

Were they at that time to leeward of the Britiſh fleet?—They were.

How was the wind?—Weſterly, or W. N. W.

Was the French fleet then between the Britiſh fleet and the port of Breſt?—Moſt certainly.

Where were they the next morning?—In the N. W.

Was not the Britiſh fleet then between the French fleet and the port of Breſt?—Certainly.

What do you apprehend to be the cauſe of the French fleet getting to the N. W. and placing the Britiſh fleet between them and Breſt?—I apprehend it was owing to the wind's ſhifting, as well as to the Britiſh fleet laying to.

What time did you firſt ſee the French fleet on the morning of the 27th?—I did not myſelf ſee them till five o'clock.

Did they appear to you to be in a line of battle in the morning of the 27th?—They appeared in a ſtraggling line, but not a cloſe one.

About five o'clock in the morning was that?—Yes.

After that early part of the morning, did the line appear to be more perfect and more cloſe?—I did not obſerve them after, for I was engaged in making ſail.

In the morning of the 27th, was the Britiſh fleet ſcattered and diſperſed?—They were not in a line of battle, but in the uſual ſtate of ſail.

Preſident. What occaſioned your making ſail in the morning of the 27th?—The Worceſter's ſignal was made on board the Admiral for chacing, with other ſhips, to the windward.

What did you judge at that time was the Admiral's intention for making that ſignal?—I judge, that as every effort had been made in vain after the 23d to bring the French to an action, the Admiral made the ſignal for theſe ſhips to chace to windward, to endeavour to bring the French to action if poſſible.

Sir Hugh Palliſer. How many ſignals of the Vice of the Blue's diviſion were made at that time?—— I believe about that time there were ſix.

Did that ſignal leave the Vice of the Blue with more than four?—No.

Sir Hugh Palliſer. Did that ſignal cauſe that part of the fleet to be more ſcattered than you ſay they were before?

Admiral Keppel. Capt. Robinſon has not ſaid they were ſcattered.

Sir Hugh Palliſer. Separated?

Admiral Keppel. Nor ſeparated. I beg that the words of the evidence may be attended to.

Sir Hugh Palliſer. Did that ſignal cauſe that part of the fleet to be ſeparated and diſperſed?—It certainly enlarged the diſtance between the centre and the chacing ſhips.

Did it not ſeparate them from their own flags?—It certainly did.

Did the Britiſh fleet tack altogether by ſignal, and at what hour?—At ten o'clock, or very near it, the Admiral made the general ſignal for all to tack together, and the chacing ſhips complied with that ſignal as ſoon after as poſſible.

Before the ſignal was made for ſhips to chace, was the Vice Admiral of the Blue and his diviſion a-head of the Admiral, and ſomething under his lee-bow, or what was his ſituation?—The Vice-Admiral and his diviſion was a-head of the Commander in Chief, but a little on his lee-bow.

Were not the ſhips that chaced in different ſituations, ſome a-head, ſome a-ſtern, ſome to windward, and ſome to leeward, at the time the ſignal was made for them to chace?—I only anſwer for the ſituation of the Worceſter.

When ſhips chace from different ſituations, as before ſuppoſed, and who differ in their rate of ſailing, can they come one and all at the ſame time in a proper poſition for tacking?—No.

Was it not the Admiral's practice to make a ſignal for ſhips chacing to tack, when he judged they ought to do ſo?—Certainly.

Did he make any ſuch ſignal that morning to the chacing?—Not that I obſerved.

The Admiral admitted he did not.

Were not four of the ſhips that were ſent out to chace, the whole of the Vice of the Blue, that was ſtationed in the line of battle between the

the Vice-Admiral and the Admiral's of your diviſion?—I have not yet named any ſhips that chaced.

Were not the Elizabeth, the Defiance, the Robuſte, and the Worceſter, the ſhips?—Yes, they were.

Did not that leave a wide ſpace between the Formidable and the Admiral's own diviſion?—It certainly extended the diſtance to what it was before.

As you was in chace at that time, could you ſee the diſtance the Vice-Admiral was from the Admiral at that time?—It was impoſſible to aſcertain.

If thoſe four ſhips had been permitted to take their ſtation inſtead of chacing, would not the two diviſions (the centre and Vice of the Blue) of the fleet being more connected than they were after thoſe ſhips were ſent a chacing and ſeparated?——Undoubtedly.

Sir Hugh Palliſer. Do you think that ſhips proceeding along an enemy's line ſingly, are expoſed to more or leſs damage, than if the fleet was connected and proceeded together?——Undoubtedly to more, ſuppoſing the enemy's line to be compact, which in this caſe it was not.

Did not the chacing ſhips, ſo far as you know, come into action ſeparately?—The four ſhips that chaced came in ſeparately, and ſome a conſiderable diſtance from each other.

Were any ſhips near to you ſo as to be of ſupport to each other?—I do not know what time you allude to. I was two hours in action, and was nearer at one time than others.

Did part of the chacing ſhips go a-head, and join the wake diviſion?—I really do not know.

If the ſix ſhips had not been taken from the Vice of the Blue and ſent to chace, might not the Vice of the Blue, with his whole diviſion, have gone into action in a connected body, and have ſupported each other?—Yes, I ſhould think ſo.

Captain Duncan. Do you think, if the Admiral had made the ſignal for forming a regular line, and chacing in that regular line, he could have brought the French to action that day?—No, by no means.

Sir Hugh Palliſer. Was it the van diviſion, or the ſhips in the rear diviſion, that began the engagement?—About eleven, or thereabouts, in the morning, I obſerved the van diviſion in engagement with the enemy.

You ſay at different times you was in different ſituations. I would aſk if, at any time of the action, whether thoſe four chacing ſhips were ſo ſituated, as to be of ſupport to each other?—No ſhips that I could ſee, could veer near enough to ſupport each other, I think.

Were there not ſix ſhips in all that chaced?—Four, I ſaid, before I was ſure of, I believe there were two more, but I am not certain of them.

Do you think the damages you received in the engagement were probably greater than they would have been, if you had engaged in a body with the reſt of your diviſion ?—That depends greatly on circumſtances, the number of ſhips I engaged, and the enemy's ſituation.

Captain Duncan. Were the enemy lying cloſe ?—No, far from it; they were much ſcattered.

How far do you think the Britiſh fleet were from van to rear at the beginning of the engagement ?——It is difficult to aſcertain diſtances at ſea; but it appeared to me, that the diſtance from van to rear of thoſe in battle might be full three leagues.

Captain Boteler. You ſay the French fleet was much ſcattered. Were they much extended ?—I was too buſy to obſerve.

In what part of the French fleet did you begin to engage ?—I received two fires from the French van, about ten minutes paſt twelve.

What ſhip did you firſt begin with ?—I thought it was the third ſhip, ſhe being cloſe to me.

Did any of them a-head of you bear down, with intention, as it appeared to you, to cut you off ?—Several of them did bear down, but I concluded it to be with an intention to engage me cloſe, which they did.

Did any of them bear upon your ſtern to rake you as they paſſed ?—Several did bear down, as I have obſerved before, but one particularly bore down before the wind, came, I believe, within piſtol ſhot, under her top-ſails, then ſtar-boarded her helm, let fall her fore-ſail, ſtood under the Worceſter's ſtern, and raked her fore and aft.

Were any of our ſhips near you at that time ?—I know the Formidable could not be a mile from me.

Did you obſerve the Formidable when ſhe went into action ?—At intervals, when the fire and ſmoke was clear from me, I could ſee her, but do not know when ſhe firſt went into action.

In the courſe of the engagement, what ſhips were a-ſtern of the Formidable ?—Four ſail were a-ſtern of her.

What were their diſtances with reſpect to each other, were they cloſe or wide from each other ?—I was ſo much engaged, that I could not poſſibly obſerve that.

Did you obſerve the Formidable, with her mizen-topſail a-back, to make theſe ſhips cloſe, turning all the time ſhe was engaged, or any part of it ?—I did not ſee the mizen-topſail of the Formidable a-back, but I obſerved that the Worceſter did not make with her.

What time did you paſs the ſternmoſt ſhip of the enemy ?—About five minutes after two in the afternoon.

When the Admiral, with the van and centre diviſions, and the ſhips with them, had paſſed the rear of the enemy, did they immediately wear and tack, and double upon the enemy to renew the attack ?—I neither ſaw them tack or wear, but I ſaw Sir Robert Harland's

Harland's diviſion ſtand to the ſouthward, double, and ſtand to the enemy.

Preſident. Do you judge the action would have been brought on that day, if the Admiral had waited to make his line cloſer, and more compact?—No, I do not think it would; for in the morning the French were uſing every endeavour to avoid coming to action, as they had done every day from the 23d. Afterwards they bore down indeed.

Sir Hugh Palliſer. Did the Admiral, Sir, with the ſhips that had paſſed the rear of the French line, keep ſo near to the enemy, as to be in immediate readineſs to renew the engagement when the Vice of the Blue came out of it, or to countenance and ſupport him while he remained in it?—I did not ſee the Commander in Chief immediately, for they had done engaging a conſiderable time before me. I obſerved when the Worceſter came out of action, that the ſignal for battle was hauled down, and the Vice-Admiral Sir Robert Harland, with part of his diviſion, were to windward, had ſhortened ſail and brought to, with the main-top-ſail to the maſt; but I cannot be poſitive.

At the time the French ſhip raked you, what tack was ſhe upon?—I obſerved, before ſhe bore down before the wind, ſhe gave me a broadſide, put her helm a ſtarboard, laid her head to the northward, and then edged away a little, and raked me fore and aft.

At the time you firſt diſcovered the Admiral when you came out of action, and that the ſignal for battle was hauled down, how far was the Victory then from the Worceſter?—I cannot be clear as to the diſtance; ſo ſoon as we came out of action we brought to.

If the Admiral, with the body of the fleet, had wore at the ſame diſtance the Formidable did, might not the enemy have been immediately re-attacked with his diviſion and Sir Robert Harland's?—If Sir Robert Harland, who was to windward, had had his ſhips in order, he might have done it beſt. I do not think the Admiral with his diviſion could have renewed the action.

If the Admiral had wore as the Formidable did, and the Red diviſion being ſituated as they were, might not the enemy have been re-attacked?—When the Formidable wore, I think ſhe was in a line with the French fleet, or a part of them, conſequently if the Commander in Chief had been in the ſame ſituation, and fit for action, they might have been ſo re-attacked.

From the very briſk fire that was kept up by our ſhips that day, have you any reaſon to ſuppoſe that the French ſhips were not damaged in proportion to the Engliſh?—I imagine they were; one ſhip in particular I ſaw put away before the wind, and a frigate to attend her.

Admiral Montague. As you paſſed from the van of the French to the rear when you came out of action, did it appear to you they had ſuffered ſo much in their maſts, yards, rigging, and ſails, as the Engliſh had?—As I could not at that time form any judgment of the whole of the Britiſh fleet, I cannot make a compariſon in general, but

but I obſerved that the French fleet had ſuſtained much damage, as moſt of them had been in action before they paſſed me.

Except the ſhip that bore away with her main-yard gone, and the frigate to attend her, did you obſerve any other French ſhip that had loſt her maſt or yard?—No.

Sir Hugh Palliſer. Was there any appearance of any other ſhip, either Engliſh or French, being totally diſabled by the loſs of their maſts or yards?—I declare I cannot recollect either one or other with jury-maſts.

When the Formidable wore with her head to the enemy, did you do ſo?—I did.

Whilſt the Formidable and your ſhip were lying with their heads towards the enemy, did you obſerve any of the French ſhips make ſail towards them?—Yes, ſeveral.

Was that the reaſon of your wearing again, and ſtanding towards the body of the fleet?—It was.

Did the Formidable do the ſame about the ſame time?—There was but very little time between the Formidable and Worceſter's wearing to ſtand to the ſouthward.

After you had wore and ſtood towards the Admiral, did he appear to be alone, or the body of the fleet about him?—There were ſeveral ſhips that paſſed me before the Admiral came up; I think ſo; I brought to directly to repair my rigging.

Preſident. Was the Worceſter in a condition to renew the action after ſhe wore?—By no means.

Court. Pleaſe to relate the chief of your ſhip's damage.—My main-top-maſt more than two-thirds through, about ſix feet above the cap, ſeveral ſhot through and through the fore-maſt and bowſprit, one particularly through the bowſprit juſt within the gammoning by a forty-two pounder, the mizen-yard in many places, a great many ſhot through her ſides and ſtern frames, moſt of my ſtanding and running-rigging damaged. All my ſails damaged, particularly the main-top-ſail, ſtays and back ſtays damaged; in ſhort, the whole ſtanding and running-rigging, tack and ſheet brace and bowling. The fore-maſt, when opened, will be found to have ſeveral ſhot which we dared not extract.

Admiral Montague. Then, Sir, in the condition you have repreſented the Worceſter to be in after action, ſuppoſing the Admiral had wore, could you have been in a proper condition to ſupport him, ſuppoſing he had thought proper to renew the engagement?—Not immediately by any means.

How long firſt?—We were upwards of three hours and a half before ſhe edged down, in a ſtation of line of battle, conſequently could not have been ready before.

Sir Hugh Palliſer. Did you obſerve the Admiral wear a ſecond time, and ſtand to the ſouthward?—I cannot be certain to time, but about four o'clock the Admiral was ſtanding towards the enemy, for the ſignal for the line a-head.

Did

Did you obſerve the Formidable and Victory meet?—I did not.

When the Formidable and Worceſter wore a ſecond time, and laid their heads to the Victory, did you obſerve the French ſhips you mentioned make ſail towards them, then edge away, and endeavour to form a new line of battle, being ſomewhat to leeward of the Britiſh fleet?—I ſaw them edge away, and thought they intended to form a new line to leeward.

When the Worceſter wore, what poſition was the body of the French fleet in?—As near as I can gueſs, it was a-ſtern of the Worceſter, and to leeward withal, formed into a line of battle, with their heads to the ſouthward, and their ſtarboard tacks on board.

Whether, in caſe your ſhip had come along-ſide of a French ſhip, (defective as you have deſcribed her) that might be ſuppoſed to have received as much damage as yourſelf, was the loſs of your men ſo great, and a number of your guns ſo diſabled, that you could not have engaged her?—I ſhould have been complaiſant enough to have engaged her, if ſhe had been complaiſant enough to lay along-ſide me, as long as I had a barrel of gunpowder. I had no guns diſmounted.

Was you that afternoon in the Admiral's wake, or nearly ſo?—I was a-ſtern of the Admiral, and to leeward, and got into my ſtation in the line about ſix o'clock.

What ſituation was you in on the morning of the 28th, with reſpect to the Victory at day-light?—I was pretty well in my ſtation in the vice Admiral of the Blue's diviſion; the Victory was a-head, and to windward withal.

Did you ſee any of the French ſhips that morning?—I ſaw three large ſhips, which I took to be French, on the lee-beam, or rather abaft it; one of them, about a mile and a half from the Worceſter; the others were about three or four miles, according to the beſt of my judgment.

Were they apparently to you nearer to any other part of the Britiſh fleet than they were to the Worceſter?—I believe there were two ſhips a-ſtern and to leeward of the Worceſter, that were nearer to them.

Were thoſe three ſhips chaced?——I did not ſee them.

Was the reſt of the fleet ſeen that morning?——Not from the Worceſter.

Was the ſignal made for ſeeing them made by any other ſhips in the fleet?—I did not obſerve or ſee any ſignals made, but I obſerved on board the Victory two or three ſhip's ſignals, which I apprehended were for ſhips to chace, but I did not ſee the chacing flag.

Was you acquainted by your officer, that ſome ſignal had been made that the French fleet was ſeen to the S. E.?—Of none but the three ſhips I have mentioned; I did not hear or ſee of the body of the French fleet being ſeen.

Did thoſe three ſhips crowd ſail from us, and which way did they ſtand?—In the dawn of the day they had much the ſame ſail ſet that

we

we had, and kept the ſame courſe. As ſoon as it came to be clear day, and they found us to be the Britiſh fleet, they bore away, with all the ſail they could croud, to the S. E.

If the Britiſh fleet had chaced thoſe three ſhips, and ſuppoſe the French fleet to be in the direction they ſteered, was there not a probability of our undamaged ſhips coming up with their diſabled ſhips, and in that caſe might not we have taken them; or if the reſt of the French fleet ſtaid to ſupport them, might not another engagement have been brought on?—Some of our undamaged ſhips might poſſibly have chaced the three ſhips, but as I did not ſee the body of the fleet, I can be no judge of their ſituation, nor what they would have done; it depended wholly on the diſtance we were then from Uſhant or Breſt, the part the three ſhips ſeemed to ſteer for.

Admiral Montague. You ſay the body of the French fleet was not ſeen from the head of the Worceſter; then if Admiral Keppel had ordered the undamaged ſhips to chace thoſe three ſhips, might they not have been led into the mouth of the enemy, before the diſabled part of our fleet could have come to their ſupport?—It depended wholly on the diſtance the body of the French fleet was from the chacing ſhips, and likewiſe whether our ſhips ſailed better than their's.

Admiral Buckle. When did you laſt loſe ſight of the French fleet in the night of the 27th?—I ſaw them about eight o'clock at night, about two miles to leeward of the Britiſh fleet, and about ten o'clock the maſter and four lieutenants that were upon deck, came and informed me, that they ſaw ſeveral rockets fired into the air from the French fleets; afterwards we ſaw nothing of their lights.

On the 28th in the morning, how was the wind when you diſcovered the three ſhips?—About W. N. W. with freſh gales and hazy weather.

Was then the Worceſter, at your command, in a condition to go down on an enemy's lee ſhore, and begin a general engagement?—Not to go on a lee ſhore by any means whatever, or to chace.

Sir Hugh Palliſer. In caſe the fleet had chaced nearly before the wind on the 28th, could not the Worceſter have carried all her ſails to have company with them?—As the Worceſter's main-maſt was not injured much, I apprehend before the wind I could carry ſail, having got my main-top-maſt fiſhed and ſecured the night before.

What latitude was the Worceſter in at noon of the 27th?—Latitude 48. 32. N. Uſhant bore eaſt about forty leagues, at noon of the 28th, it was 48. 16. N. Uſhant bore that day E. 28 leagues, N. 80 degrees.

In the middle of the ſummer, as that was, ſuppoſing ach ace of 30 leagues, was the chance of having moderate and fair weather, or a gale of wind, the moſt probable?—The wind and weather for that time of the year was rather extraordinary, it having blown freſh, and was thick and heavy for three or four days together before.

Admiral

Admiral Montague. During the courſe of your ſervice, have you not frequently known heavy and hard gales of wind in ſummer?—— Certainly I have; I have been thirty years at ſea.

Preſident. What ſort of weather had you for three or four days afterwards?—The next day was rather bad, blew freſh, and the weather was heavy, the others I muſt refer you to the log-book for; on the 29th it was ſqually, with rain; 30th freſh gales and moderate; 31ſt moderate and cloudy, with rain at times.

Sir Hugh Palliſer. Being the middle of ſummer, and ſhort nights, do you imagine we ſhould have been in imminent danger if our fleet had purſued the French fleet until we had ſeen them into harbour, or made the land off Uſhant?—That depends upon the certainty of the diſtance; had I been ſingle, and in chace of the enemy, I ſhould have ſtood in until I made the land, or judged myſelf near it; as to a fleet, it depended entirely upon the ſituation of it; if it was in a good ſituation, I ſhould not heſitate a moment about it.

Are you acquainted with that part of the French coaſt?—Not ſo well as to run a riſque, without I had a maſter on board who is better.

Is Uſhant the bottom of a bay, or the extremity of the coaſt?—I apprehend it is an iſland, and at the extremity of that iſland, detached from the main.

Did the Admiral, on the 28th, lay the fleet with their head to the northward; and before they laid their head to the northward, did you obſerve any ſhips make ſignal to ſet up their rigging?—If I had, I ſhould likewiſe.

Admiral Montague. Upon the whole then, Sir, did it appear to you, as an old and experienced officer, that Admiral Keppel, by his conduct on theſe two days, tarniſhed the honour of the Britiſh flag?—NO, Sir, I have had the honour of knowing him many years. I always looked upon him as an exceeding good officer, inwardly a good man; and I believe him ſo ſtill, having no reaſon to think to the contrary.

TWELFTH DAY, WEDNESDAY, *January* 20.

AT ten o'clock the Court was reſumed, when Captain Robinſon, of the Worceſter, was again called, to be croſs-examined by Admiral Keppel.

Admiral Keppel. When you firſt ſaw the French fleet on the 23d, what force do you think it conſiſted of?—I really cannot tell their force, but I counted forty-four ſail, large and ſmall.

How was the Vice-Admiral of the Red ſituated, with reſpect to the Admiral of the fleet?—I cannot ſay; I recollect he was conſiderably to leeward.

Do you think that any time on the 23d the French fleet could diſcover what the Britiſh fleet conſiſted of?—I really do not know.

Did the Admiral purſue the French fleet in the afternoon of the 23d, in a line of battle, carrying a deal of ſail?—He did.

In the morning of the 27th, how far was the Vice-Admiral of the Blue, and his diviſion, to leeward of the Victory, when the ſignal was made to chace to windward?—I was not on the deck before the ſignal was made, but when I did ſee her, the Victory could not be leſs than two miles a-ſtern, and to windward withal.

Under what ſail was the Vice of the Blue and his diviſion, when the ſignal was made to chace to windward?—I cannot anſwer for the reſt of the diviſion, but the Worceſter was under cloſe-reefed top-ſail, fore-ſail, main-top-maſt, ſtay-ſail, and fore-top-maſt ſtay-ſail.

Do you underſtand, Sir, when a ſignal is made to chace to windward, that it obliges you to ſtand on one tack, till the Admiral makes a ſignal for a general tack?—I always underſtood, when a ſignal was made to chace to windward, that the ſhip ſo ordered was to ſtand on that tack, till he could plainly ſee that the Admiral's ſignal called him in, or to tack when the Admiral thought proper.

Could you not have tacked upon that ſignal, without the Admiral's making the ſignal for you to tack?—I undoubtedly could have tacked.

Are there not quarter ſignals for ſhips to chace upon, when the Admiral would have them to chace upon a quarter, between any two points, as between the N. and W.?—Certainly there are.

Preſident. When your ſignal is made to chace, do you, or do you not, think that you are authoriſed to take advantage of the wind, by tacking without ſignal?—Yes, Sir, when I have an object in view.

Admiral Montague. When you have not an object in view, do you not think it is your duty to get as much to windward in the wind's eye as you can?—I do.

Admiral Keppel. Would you not have tacked before you did, without waiting for a ſignal, if you had expected the fleet to cloſe with the enemy ſo ſoon?——I certainly ſhould have tacked when I found the object of our chacing was anſwered, which was that of bringing the French fleet to action.

When you ſaw the Engliſh fleet engaging, did you keep your wind, or could you, by a very rapid ſail, have cloſed in with your diviſion ſooner than you did?—I anſwer, if I had taken any wind, I could have weathered more than half the French fleet, the wind having ſhifted more than two or three points to the weſtward, that I was obliged to keep away in order to join my diviſion as ſoon as I could, but in the mean time the French fleet edged away, and I was afraid they would have cut me off from my diviſion.

Then, Sir, could you imagine it poſſible for the Admiral to have made a ſignal that ſhould put you in that ſituation?——Not intentionally, I am clear.

You

You ſaid yeſterday, when you was engaged, the Formidable was a mile from you, and that there were four ſail a-ſtern of the Formidable; what was the name of the neareſt of thoſe four ſhips?—I believe it was the Robuſte.

Were there any ſhips between you and the Formidable at the time you came out of action?—There were not.

Can you inform the Court what became of the four ſhips that you deſcribe to have been a-ſtern of the Formidable in the beginning of the action?—Every one of the ſhips a-head of the Worceſter were engaging the enemy, conſequently ſtood on, and I believe went to leeward and a-head of the Formidable, to the beſt of my knowledge, when the ſmoke would permit me to take notice of them.

Was the Formidable's mizen-top-ſail aback at any time while theſe ſhips were paſſing by her?—I never ſaw the Formidable's mizen-top-ſail aback.

Did thoſe ſhips paſs to leeward and a-head of the Formidable when in action, in conſequence of the Admiral's ſignal in the morning, to chace to windward?—Had the ſignal not been made to chace to windward, it is poſſible thoſe ſhips would have been in a different ſituation to what they were in at that time.

That does not anſwer my queſtion; I aſk you whether they did not paſs to leeward and a-head of the Formidable, in conſequence of my ſignal to chace at five in the morning to windward?—It is not poſſible for me to know their reaſons, for they engaged the enemy before the Worceſter, being a-head of me on that tack.

Do you mean, Sir, that they never were ſo cloſed as to give ſuccour to the Vice-Admiral of the Blue, and to one another?—I do not know that ever they were nearer than half a mile of one another, and ſometimes more apart when we could ſee them for ſmoke.

Does *ſometimes* mean the beginning of the action, or what time, ſince ſometimes takes in different periods?—In the courſe of the action I cannot be particular as to time; it was between five minutes paſt twelve, and five minutes paſt two, the time that I was engaged.

Do you mean that in no time between thoſe periods, the ſhips were not cloſed together nearer than half a mile, ſo as to be of ſupport to each other?—I do not recollect that they were.

Do you recollect that they were not?—I do not. I really cannot judge of the whole.

Sir Hugh Palliſer. I muſt inſiſt that the priſoner do not aſk the queſtions ſo often.

Admiral Keppel. I am always under the controul of the Court; but as I never interrupt the proſecutor in his queſtions, I muſt claim the privilege of not being interrupted in my croſs-examining Captain Robinſon, who has taken a large ſcope, a period of two hours; that is my reaſon for aſking him.

The witneſs deſired the evidence he had given this day might be read, which was done.

Admiral Keppel. You have ſaid that three ſhips paſſed a-head of the Formidable during the action. How do you reconcile that with their never being nearer than half a mile?—I did not ſay they paſſed a-head of the Formidable; they paſſed a-head of the Worceſter from the ſituation they were in a-ſtern.

The Court begged that the minutes might be read, where he had ſaid that there were four ſhips a-ſtern of the Formidable in the courſe of the engagement, and which, in another place, he had ſaid had paſſed a-head and to leeward of the Formidable. Theſe facts were read by the Judge-Advocate from the minutes, and clearly demonſtrated that the Captain had either miſtaken the matter the firſt or ſecond time. Admiral Keppel, with his uſual openneſs, begged the witneſs to recollect himſelf; to think before he ſpoke, and be careful of his meaning. He did not wiſh, in the ſmalleſt degree, to miſlead him, or to hem in and tie him to a meaning, if he wiſhed to paſs from it.

Admiral Keppel. If they were a-ſtern of the Formidable when in action, and got out of action before her, muſt they not have paſſed her during the action?—I do not know.

You have ſtated your ſhip to be very much expoſed while in action, which you begun with the third ſhip of the enemy's van, and carried on along the line. I ſhould be glad to know how many men you had killed and wounded?—I had but three men killed and five wounded, but ſome of the men, I believe, died of their wounds a few days after.

Was the Victory ſtanding to the enemy on the larboard tack when you firſt ſaw her after you came out of action?—She was.

Can you inform the Court the preciſe time when you wore and ſtood towards the enemy, when you came out of action?—I cannot fix the preciſe time.

Can you ſay any time near it?—I believe it was near a half after two, but cannot be poſitive.

How long did you ſtand on the larboard tack, when you did wear, and when you wore ſtanding back again to the Admiral, was it by ſignal?—The moment I wore I brought to. I did not make ſail. I was not in a condition to make ſail; and when I was to ſtand back, it was not by ſignal. I did not ſee the Admiral.

After you wore back to the Admiral, how near did the Admiral paſs to the Worceſter?—I really do not recollect how near, but it was not far diſtant.

Was the Admiral then upon the larboard tack?--I believe he was.

Did you ſee the ſignal at that time flying on board the Admiral for the line of battle a-head?—No, not at that time, but I did at four o'clock.

Had you no officer appointed to obſerve the Admiral's ſignals?—I had, but he was wounded early in the action.

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When the Formidable paſſed you, do you recollect where the Formidable was?—To the beſt of my knowledge ſhe was to windward.

Do you ſay poſitively, that when you wore the ſecond time after the action, to ſtand toward the Admiral, ſeveral ſhips paſſed you a-head of the Victory on the larboard tack?

Sir Hugh Palliſer begged the witneſs might be permitted to refer to his former words, whenever he ſhould find it neceſſary to do ſo.

Admiral Keppel. Mr. Preſident, though it is not the practice for witneſſes on their examination to have reference to what they ſaid before, I agree to it chearfully. I have no deſign to perplex or miſlead any witneſs. I wiſh only for the diſcovery of truth, and I hope that candour and plainneſs will lead me to it.

Court. When you want your memory refreſhed the minutes ſhall be read.

I am poſitive that ſome ſhips paſſed, what they were I do not know; and that one of the ſhips, to the beſt of my remembrance, hailed the Worceſter, and told us to get out of the way, for the Admiral was coming up.

Was that ſhip and the Worceſter at that time to the ſouthward?—I do not recollect.

I aſk you this queſtion, becauſe the ſouthward is a-ſtern of the Victory. Now you know of one ſhip, was that a-head or a-ſtern of the Victory?—I really do not know.

Do you know of any other ſhip?——I was ſo much engaged in putting my ſhip to rights that I could not ſee.

What time did you ſee the French fleet forming the line on the ſtarboard tack, ſtanding to the Britiſh fleet on the 27th, after the action?—I obſerved ſome of the French ſhips ſtanding to the ſouthward between two and three o'clock, I cannot tell the exact time.

Was it before you ſtood towards the Engliſh Admiral?—Yes.

When you ſay you got into your own ſtation and the Admiral's wake at ſix o'clock in the evening, do you mean that you was then got into the wake of the Vice Admiral of the Blue, or of the Commander in Chief?—I mean, that I was in my ſtation in the Vice of the Blue's diviſion; and as near as I could get between the Vengeance and the Elizabeth; but the Vice-Admiral of the Blue was to windward, and the Commander in Chief a-head, and to windward withal.

When the Admiral laid his head to the northward on the 28th, did the bring to on the larboard tack?—I believe, in the morning of the 28th, the Admiral made the ſignal to wear, laid their heads to the northward, and brought to; I think ſo, to the beſt of my recollection.

Did he not ſtand before the wind at all after wearing?—I do not recollect, certainly. I believe he did make the ſignal for the line ſome time.

After the fleet was laid to on the larboard tack, was your ſhip one of thoſe that made a ſignal to ſet up rigging?——I did not make that ſignal at all.

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As you ſay you are certain that ſeveral ſhips paſſed you on the larboard tack, after the action, and gave, as a reaſon for that certainty, that one ſhip hailed you to get out of the way, for the Admiral was coming up?—what do you mean by ſaying you do not recollect whether that ſhip was a-head or a-ſtern of the Admiral?——Upon recollection, I think he muſt have been a-head of the Admiral on the larboard tack.

Do you recollect whether that ſhip that hailed you was on the larboard or ſtarboard tack?—I have ſaid before I cannot recollect.

Do you recollect whether it was a two-decked or three-decked ſhip?——I do not.

Admiral Montague. Do you recollect what anſwer you gave the ſhip that hailed you?—Perfectly well. It was, that they muſt ſee my ſituation, and that it was out of my power to get out of their way; but I would do the beſt I could.

When you was hailed, did you not naturally look to ſee where the Admiral was?—I did not ſee the Admiral, but they told me he was a-ſtern coming up.

Preſident. What happened in conſequence of that anſwer? Did the Admiral paſs you to leeward or to windward, or did the ſhip that hailed you bring to?——To the beſt of my remembrance the ſhip paſſed on a-head, but I know not on what quarter.

Did the Admiral paſs you?—I was ſo much engaged that I do not recollect.

He was then ordered to withdraw.

Mr. SEWELL, Maſter of the *Worceſter*, was then called in and ſworn. Before Sir Hugh Palliſer begun to queſtion him, the charge was read to him, as he had not been preſent at the firſt reading.

Sir Hugh Palliſer. Do you remember ſeeing three ſhips of the enemy in the morning of the 28th, at day-light?—Yes.

What diſtance do you reckon they were from the Britiſh fleet?——The ſternmoſt ſhip of the three was from the Worceſter a mile and a half, as near as I could judge.

Was ſhe nearer to any other part of the Britiſh fleet than to the Worceſter?—There was a ſhip a-ſtern of the Worceſter, rather a little on the larboard quarter, that did appear to be ſomething nearer than the Worceſter was.

Do you remember, when the Worceſter came out of action, at what diſtance the Admiral and body of the fleet were from the rear of the enemy?—As near as I can gueſs, they were to the ſouthward of the Worceſter about two miles; their heads towards the enemy, with their larboard tacks on board.

Did you take notice of the Vice-Admiral of the Red and his diviſion at that time?——I ſaw the Vice of the Red, and ſome ſhips with him, to windward of the Admiral, and a-head withal.

Were they alſo on the larboard tack?——They were.

Croſs-

Croſs-Examination by Admiral Keppel.

You have ſaid, that in the morning of the 28th, there was another ſhip on the lee-quarter of the Worceſter, and that the neareſt of the three ſhips were within a mile and a half, did that ſhip or the Worceſter lay their heads towards her, and make a ſignal to the Admiral that ſhe was ſo very near, and was an enemy?—The Worceſter did not, and I cannot ſay as to the other ſhip.

At what time did the Worceſter come out of action on the 27th?—About two o'clock.

Preſident. Had a ſignal been thrown out for your ſhip to chace at the time you are ſpeaking of, in the morning of the 28th, was you in a condition to chace?—No.

Admiral Keppel. Did you ſee the Victory when you came out of action?—I did not.

How ſoon then did you ſee her afterwards?—About three o'clock.

Was ſhe then upon the larboard tack?—She was bearing down, and had the ſignal flying for a line of battle.

Did you obſerve, at that time, any ſhips formed in a line of battle, a-head or a-ſtern of her?—No. There were a great number of ſhips round her.

Do you mean a-head of the Victory?—Some a-head, and ſome on each ſide of her.

Can you name any of them?—No.

Do you mean the Vice-Admiral and his ſhips among the number?—They were to windward of him, but I cannot recollect whether any of thoſe ſhips bore down with them.

Then you cannot name any one individual ſhip?—No.

Though you obſerved thoſe ſhips around the Admiral, and cannot mention one of their names, had they their ſtarboard or larboard tacks on board, can you tell?——They were going down before the wind, with the line of battle flying.

Are you quite exact as to your time?—It was between three and and four in the afternoon.

Did the Worceſter wear and lay her head towards the enemy after ſhe came out of the action?—She did.

How long did ſhe continue on that tack before ſhe wore again?—About half an hour.

How near did ſhe paſs the Victory, ſtanding on the larboard tack, after wearing again, and ſtanding to the ſouthward?—About a mile.

Can you recollect what time it was?—I cannot juſtly ſay, it was ſomething after three o'clock.

Do you recollect any ſhip hailing you after paſſing the Victory?—I recollect there was a ſhip that hailed us, and deſired us to endeavour

to

to make more ſail and get out of the way of her, as the Admiral was then a-ſtern of him, and other ſhips on each ſide of him.

Was that ſhip then on the ſtarboard or larboard tack ?——Neither. She was coming down right before the wind.

Do you recollect that ſhip's name, or whether ſhe had two or three decks ?—I don't know her name ; ſhe had three decks.

Am I to underſtand the ſhip that hailed you was going before the wind, or in a ſtate of wearing ?—She was going before the wind in a ſtate of wearing, to haul up with her ſtarboard tacks from the line.

Court. When you came out of action, what diſtance was you from the Formidable ?—About a quarter of a mile.

Capt. Duncan. Did you, in the morning of the 28th, ſet up rigging ?—Yes, we did.

Ordered to withdraw.

CLARK DUNN, Second Lieutenant of the WORCESTER, called in and ſworn.

Sir Hugh Palliſer deſired he might be aſked the ſame queſtions that he had put to Mr. Sewell, which was done, and anſwered agreeable to Mr. Sewell's evidence.

Sir Hugh Palliſer was going on to aſk the ſame queſtions as Admiral Keppel had on his croſs-examination, but Admiral Keppel ſtopped him.

Sir Hugh Palliſer. When you ſaw the Vice-Admiral of the Red on your weather beam, can you remember whether they were under ſail, or laying to ?—Laying to.

Admiral Keppel deſired the ſame queſtions he had aſked Mr. Sewell might be aſked the witneſs.

Admiral Montague. Before you proceed, where was you ſtationed during the action ?——On the lower deck.

Queſtions were then put, and anſwers given to them exactly the ſame as had been done by Mr. Sewell. Ordered to withdraw.

Firſt Lieutenant of the Worceſter *called.*

Judge Advocate. He is ſo ill, that he cannot attend the Court to-day.

Sir Hugh Palliſer. I beg the Judge-Advocate may read Admiral Keppel's letter to the Lords of the Admiralty, on the 30th of July.

Admiral Keppel. I have no objection.

[Here Admiral Keppel's letter, as inſerted in the London Gazette of July 30, was read.]

Admiral Keppel. I admit the letter to be mine.

Sir Hugh Palliſer. I beg the Admiral's journal of the 27th and 28th may be read.

[Here

[Here the journal was read by the Judge Advocate, and ſtated the different winds, weather, and poſitions of the two fleets on thoſe two days, ſigned by the Admiral; it likewiſe mentioned the Admirals ſeeing the three ſhip's on the morning of the 28th, and of ordering ſome of the fleet to chace, but on finding them crippled in their maſts and yards, and not able to ſail as they ſhould do, he ordered them to leave off chacing. When the journal was finiſhed reading, the Admiral acknowledged it to be his.]

Admiral Montague. I move that all the papers that have been read, do lay upon the table for our inſpection and peruſal.—— Agreed to.

CAPT. BAZELY, of the *Formidable*, Sir Hugh Palliſer's own ſhip, was then called.

Sir Hugh Palliſer. Did you ſee the French fleet on the morning of the 27th?—Yes.

Did you ſee them at any time in line of battle?—Yes.

How was the Vice of the Blue ſituated as to the Admiral, whether a-head on the lee-bow, or how?—On the lee-bow, and a-head withal.

Do you remember the ſignal for ſix ſhips of the Blue diviſion to chace?——To the beſt of my recollection there was.

Did that diſperſe thoſe ſhips from their Admiral, and from each other alſo?—It cauſed them to be extended from their Admiral, but whether ſeparated from each other I cannot ſay.

In the morning when the Vice of the Blue, and his diviſion, was ſituated as you deſcribe, were they not properly ſtationed to take their places in a line of battle if the ſignal had been made?—They appeared ſo to me, if the ſignal had been made to form on the larboard tack.

If all the ſhips of that diviſion had been ſuffered to remain with the Admiral, might they not have gone into action with him ſo as to have ſupported each other?——Yes.

[The public will ſee that theſe queſtions have been aſked before, and the whole tendency defeated by this plain but ſtubborn fact, that by lying to for the Rear diviſion, which was far to leeward, and forming on the larboard tack the line of battle, the enemy would have got away, which was evidently their intention.]

Did the chacing ſhips come into action ſeparately?—They appeared ſo to me, thoſe that were a-ſtern.

Did part of them, by chacing go a-head of the Formidable, and join the centre diviſion?——Yes, two.

Did that leave the Vice of the Blue equally ſupported as the other flag officers?—No.

Were any of the ſhips of the Vice of the Blue's diviſion within gun-ſhot of the Formidable when ſhe began the action, except the Ocean, then to leeward of her?—The neareſt ſhip a-ſtern was half a mile from her.

During the action were not four of our ſhips at a diſtance a-ſtern ſeparated?——It appeared ſo before the action began, after I cannot tell.

During the time the Formidable was engaged, and paſſing along the French line, were any ſhips ſo near to her as to have ſupported each other, except at one time, when the ſmoke was ſo thick that to avoid being on board her ſhe was obliged to go to leeward?—After the Formidable opened her fire, I obſerved no other.

What ſhip was that ſuppoſed to be?—I cannot ſpeak to that.

In what part of the French line did the Formidable begin the cloſe action?—One ſhip a-head of the French Admiral, in the centre.

Did ſhe receive the fire of ſeveral ſhips in the van, before ſhe began to fire in cloſe action?——Yes.

Do you think the damages the Formidable received were not much greater than they would probably have been if ſhe had fought in a body with the reſt of the Blue diviſion?——Moſt undoubtedly.

As you paſſed along the French line, did they appear more irregular than might reaſonably be expected, after having been engaged with our van and centre diviſions?—No.

The four ſhips you ſpoke of a-ſtern being at a diſtance, did not the Formidable back her mizen-top ſails, and proceed ſlowly for thoſe ſhips to cloſe?——The mizen-top ſail was backed, to prevent her ſhooting a-head, to avoid the Ocean's fire, and alſo for thoſe ſhips to cloſe.

At what diſtance were the ſhips of the enemy when ſhe (the Formidable) firſt began to engage?—Within muſket ſhot.

Did ſhe paſs every ſhip of the enemy's line at the ſame diſtance?—Nearer ſome, and farther from others.

Was not the Admiral ſupported with his own diviſion whole, and that part of the Vice of the Blue's which you have ſaid joined him?—He was by thoſe two, but what others I cannot ſay.

In paſſing along the enemy's line, did it, or did it not appear to you that ſeveral of them were much damaged, not keeping up ſo briſk a firing as at firſt?——I did not obſerve any particular damage they had received, but that the centre Admiral and two other ſhips returned us very little fire.

Did you obſerve one diſabled and run out of the line, with a frigate, after we had paſſed?——One with her main-yard down quitted the line.

How long a ſpace do you reckon the Formidable was engaged with the enemy?——I cannot ſay exactly, I think an hour and forty minutes.

When the Admiral, with the van and centre diviſions had paſſed the rear of the enemy, did he then wear again, double, and continue the engagement?—It is impoſſible for me to ſay when the Admiral did wear.

When

When the Formidable came the length of the rear of the enemy was the Admiral ſo near with the reſt of the ſhips under his command as immediately to renew the engagement, or ſuccour the Vice-Admiral of the Blue in caſe that the enemy had borne down to cut him off?—No.

When the Formidable ceaſed firing, do you remember you and myſelf taking notice that the Admiral, with the body of the fleet then with him, were ſtanding towards us, and I therefore ordered the ſhip directly to be wore?——I recollect, after the Formidable had paſſed the enemy's rear, the Vice of the Blue directed the ſhip to be wore, I then obſerved the Victory and ſome other ſhips ſtanding towards the enemy.

At what diſtance were they from the Formidable?—Two miles.

When the Formidable wore, were we then in the ſtream of the enemy's line, or in the wake of the ſternmoſt ſhip?—In the wake of the ſternmoſt ſhip.

At what diſtance?—Random ſhot.

Was that the time you ſpeak of, when you ſay the Victory was two miles from the Formidable?—At the time ſhe was wearing.

Whilſt the Formidable was wearing, did not the ſternmoſt ſhip of the enemy fire her ſtern chace at her?—I recollect while ſhe was paſſing, that ſome two or three ſhot were fired at her, and paſſed cloſe to her.

While the Formidable lay with her head towards the enemy, were not the officers and men ordered to return to their quarters, in expectation of renewing the attack, when the Admiral ſhould come up with the fleet?—Yes, directly after the ſhip was wore.

After laying that way a little while, did you obſerve three of the enemy's ſhips making ſail towards her?—Yes.

At this time, was the Formidable nearer thoſe ſhips than the Victory to her?—The Formidable was nearer the Victory than the enemy's three ſhips.

When the Formidable wore again, did thoſe three ſhips edge away and begin to form a line, pointing to leeward a-head of the Britiſh fleet?—They did.

Did you ſee the Vice of the Red, and where, when the Formidable lay with her head towards the enemy?——They were to windward.

If the Victory and the other ſhips with her, had wore as near the rear of the enemy as the Formidable did, after coming out of action, might the Vice of the Red, having doubled on the enemy, have borne down alſo, and prevented the French forming a new line, which they were then beginning to do with their heads towards us?—If the Vice-Admiral of the Red had bore down ſo, I ſaw nothing to the contrary.

If the Admiral, with the reſt of his diviſion, had advanced, would it not have obſtructed the enemy's line?—It certainly would have very much obſtructedthe forming of the French line.

Do you know the ſtate of the Admiral's ſhips that were with him ?—No.

Do you know the ſtate of the Vice of the Red's diviſion ?—I know the ſtate of no ſhip but my own.

What was the ſtate of the Formidable when ſhe came out of action ?—I beg to refer to the minutes; all my ſails that were ſet were cut to-pieces; and, in ſhort, ſhe was very much damaged.

Was ſhe capable of going into action again immediately ?—To go into action ſhe was, but not to purſue an enemy.

Might not the action have been immediately brought on, when the Vice of the Blue was coming out of the line, and the enemy prevented forming a new line ?—I ſaw nothing to the contrary.

Admiral Montague. If the Admiral's diviſion had wore as ſoon as the Formidable did, would it not have cauſed the ſhips of the two diviſions to run on board one another; one being upon one tack, the other upon another ?——I think not. I ſuppoſe if the Admiral with the ſhips with him had continued to advance towards the enemy, with a ſignal for battle flying, it would have prevented them forming it ſo ſoon.

Sir Hugh Palliſer. Take notice the Priſoner ſmiles.

Admiral Keppel. Does the Court preclude me that ? It is my natural countenance.

Admiral Arbuthnot. Can you venture to ſpeak of the ſtate of the Admiral or Vice-Admiral of the Red's ſhips, or diviſions at that time ?—No, of no ſhip but my own.

THIRTEENTH DAY, THURSDAY, *Jan.* 21.

AT ten o'clock the court was reſumed, when Capt. BAZELY was again called to the bar.

Sir Hugh Palliſer. If the Admiral, at that time, did not think fit to re-attack except in a line of battle, might he not have immediately formed one by making a ſignal for the Vice of the Red and his diviſion, who was then to windward to take the lead on that tack in place of the Vice of the Blue, who was then juſt come out of action ?—— I ſaw nothing to the contrary.

Did the enemy ſhew any deſign of renewing the attack ?—Not till after they began to form a line to leeward.

Did the Britiſh fleet ſeem to avoid to renew the action ?—Yes.

After the Formidable wore a ſecond time, did ſhe and the Victory meet ?—They paſſed each other.

When they paſſed each other, did the Victory ſtand on, or wear under the ſtern of the Formidable ?——She wore a-ſtern of the Formidable.

Did

Did ſhe firſt run to leeward, and then wear?—She appeared to me to go from the wind.

Did this leave the Formidable a-ſtern, and to windward withal of her wake?—Yes.

When the Victory did wear, and a little to leeward, as you deſcribe, did ſhe not then haul her wind to the ſouthward?——It appeared ſo to me.

Were not the French fleet then a-ſtern?—Yes.

Did not the Victory continue to ſtand ſo the reſt of the afternoon?—Yes, and till day-light the next morning.

Do you recollect what ſail the Victory carried during the afternoon?—I do not recollect that.

Did not the Victory always outſail the Formidable with the ſame ſail?—Yes.

After the Victory was ſtanding to the ſouthward, did the French ſtand the ſame way, pointing ſomewhat to leeward of our fleet?—Yes.

Did the Vice of the Red bear down into the Admiral's wake that afternoon?—Yes.

Was that his own, or the Vice of the Blue's ſtation on that tack?—On the ſtarboard tack it was the Vice of the Blue's ſtation.

Was that done in conſequence of the ſignals flying for the line of battle, or by particular order?—I do not know.

Did you ſee him afterwards make ſail a-head of the Admiral to get into his own ſtation?—Yes.

From the various motions of the Admiral during that afternoon, did you think that he had no intention to renew the engagement 'till next morning?—It appeared ſo to me at the time, and I expreſſed ſo to the Vice-Admiral at the time.

Preſident. What was the time?—At the time the ſignal for battle was hauled down, and in the middle of the afternoon, when the Admiral pointed to the ſouthward. I was in too much confuſion to tell the time exact; it was when the Admiral ſent for me from the forecaſtle aft.

Admiral Keppel entreated the Court to protect him againſt thoſe omiſſions which at times appeared in the minutes. The words of the witneſs "I was in too much confuſion at the time," were either neglected in the taking down, or in the reading it afterwards. The Judge Advocate ſaid, in his excuſe, that the little order obſerved in the Court was the cauſe of any omiſſion that might occur.

Preſident. Did you hear the Fox frigate deliver a meſſage to the Vice-Admiral of the Blue?—No, I did not.

Did you not ſee the Fox come under the Vice-Admiral's ſtern?—I did not ſee her till ſhe cheered the Formidable.

Were you not informed what brought the Fox there?—No, not until after dark.

Sir

Sir Hugh Palliſer. How far do you think the Formidable might be from the Victory, within half an hour after the Victory paſſed to leeward of her?—Not more than half a mile.

After the Admiral ſtood to the ſouthward, did the Formidable haul out of the way of other ſhips, to let them take their ſtations between her and the Victory?—Yes.

What was the Formidable's ſtation in the line of battle?——The ninth ſhip from the Victory.

After the Formidable got out of the way, did ſhe not ſtand after the Admiral with all the ſail ſhe could ſet, and trimmed as well as her condition would admit?—Yes.

Did not the Victory, notwithſtanding, increaſe her diſtance all the afternoon?—Yes.

Did not the Formidable ſteer after the Admiral the whole afternoon, keeping him a little open under her lee-bow?—Yes.

Was not that a proper courſe for getting into her ſtation?—Yes.

So ſoon as the Admiral wore and ſtood to the ſouthward, were not the officers, and all the hands on board the Formidable, ſet to work to knot and ſplice the rigging, and repair other damages?—Yes.

Do you recollect the diſtribution of the officers for that purpoſe?——Yes.

Do you remember the Fox coming to the Formidable?—I have already anſwered that queſtion.

At what diſtance do you think the Victory was from the Formidable?—One mile from the Victory's wake, and three miles a-ſtern withal.

About what time was that?—Near ſun-ſet.

Was you in a ſituation to hear the meſſage delivered from the Captain of the Fox?—No.

Was not the ſignal for the line of battle a-head kept flying on board the Formidable till dark night?—Yes.

Was the ſignal for ſhips to windward to bear down, with many ſhips pennants of my diviſion, let fly on board the Formidable before or after the Fox ſpoke to her?—Before the Fox cheered the Formidable, I did not hear the Fox ſpeak.

Were not thoſe ſignals made in repetitions of their being out on board the Victory?—Yes.

Had not two of theſe ſignals been hauled down in conſequence of the ſhips having anſwered them, before the Fox came down?—I do not recollect that circumſtance.

Did not the Formidable people cheer the Fox firſt?—The Fox firſt cheered the Formidable, and the expreſſion I made to the people on the fore-caſtle, was, "That's hearty, my lads, return the cheer."

I deſire you to give the Court ſome account of the damages of the Formidable in her maſts, ſails, and rigging.——The fore-maſt very much

much wounded and hurt, the top-maſt wounded, and the fore-yard and the bowſprit; the gib and fore-top-pennant ſtay-ſail cut to pieces, and went overboard; the fore-ſail very much damaged; the fore-ſtay and ſpring-ſtay ſhot away; all the bracings on the ſtarboard ſide, ſave one, ſhot away, and only three left on the larboard; all the fore-top-maſt ſhrouds and back-ſtays, except on the larboard ſide, ſhot; the top-gallant ſhrouds and ſtays, all the bracings, bowlings, and running ropes in and about the top-maſts, the fore-tacks and ſheets, were ſhot away.

Admiral Montague. Notwithſtanding the account you have given of the damages of the fore-maſt, fore-top-maſt, and bowſprit, with their ſails, &c. did you not wear twice before they were put into repair?——Yes.

That is, twice before the ſignal was made for you to come into the Admiral's wake?—Yes.

Sir Hugh Palliſer. May not any ſhip, with all her maſts ſtanding, while ſhe has any canvas aboard, in moderate weather, wear by putting her helm a-weather, although her maſts and rigging may be in ſuch condition that ſhe cannot carry ſail upon a wind to keep company with other ſhips?——Yes; we had that inſtance in the Formidable.

Were not ſeveral of thoſe ſhrouds that were ſhot cut in two places?—Yes.

Admiral Arbuthnot. You have juſt mentioned, that you had made one of theſe yard-tackle falls to brace your yards: I aſk you, whether you could not have braced thoſe yards ſhort, to enable you to ſtand upon a wind?—Yes.

The reaſon of my queſtion was, that you had ſaid before, a ſhip could not make way without thoſe ropes.

Relate the other damages.—Main-top-maſt very much wounded; main-yard, and main-top-ſail-yard much wounded; main ſpring-ſtay ſhot away; ſeven ſhrouds in the ſtarboard, and five of the larboard main-top-maſt-ſtay and ſpring-ſtay; fore main-top-maſt-ſhrouds, and all the back-ſtay, middle ſtay-ſail ſtay, and top-gallant ſtay-ſail ſtay; fore channel, three chain plates ſhot away; main channel two, mizen channel one.

Preſident. After you paſſed the French fleet, did they bring to, or make ſail?—They broke up their line, and appeared to be under ſail, not lying to.

Were you then in a condition to have followed them to renew the engagement, if the Admiral had thought proper to do ſo?——She was in a ſtate to renew the action, but not to carry ſail after the enemy.

Admiral Montague. You have ſaid, that there was ſome difference between the defects you ſuffered, and thoſe you gave an account of the next day to the Admiral. I aſk you when you took the account of the defects you have now given in?—Immediately on her arrival at Plymouth.

Sir

Sir Hugh Palliſer. Were not the officers and men employed all that afternoon, and the following night, in repairing damages?——Yes.

Did not the Formidable get into her ſtation before day-light the next morning?——She got into the line, but I cannot ſay into her ſtation.

Did not the drums beat to arms at two in the morning?—Yes.

All hands at quarters, and ready in every reſpect to engage, expecting to do ſo at day-light?—Yes.

During the afternoon of the 27th, notwithſtanding the damages the Formidable received, might ſhe not have bore down upon an enemy, having only two guns diſabled, although ſhe was not able during the afternoon, to reach her ſtation in the line of battle with the ſail the Admiral carried?—Yes. Such was the Vice-Admiral's declaration to me, though I cannot recollect as to time.

In the morning of the 28th, do you remember ſeeing three French ſhips to leeward?—I remember ſeeing three ſtrange ſail, which I ſuppoſed to be French men of war, and part of the French fleet.

At what diſtance was the neareſt of them to the Britiſh fleet?——Not more than a mile from the Formidable.

What number of men on board of the Formidable were hurt by an exploſion of powder?—It was reported to me twenty-ſeven.

Were any of them killed on the ſpot?—The officer who commanded that deck where the exploſion happened, reported to me that no men were killed by it.

What number of killed and wounded did you report to me after the action?—To the beſt of my recollection, fourteen men killed, one of whom the boatſwain, two ſince dead of their wounds, and forty-nine wounded.

Have you made a compariſon of the number of killed and wounded in the different diviſions, from the account publiſhed by the Admiral?——Yes.

What was the number of killed in the Admiral and Vice of the Red's diviſion put together?—I do not recollect the number.

Was it more or leſs than what were killed in the Vice of the Blue's diviſion?—Nearly the ſame.

And as to the wounded?—Nearly the ſame.

Were thoſe three ſtrange ſhips chaced by the Britiſh fleet?——Not that I obſerved.

Do you know of any ſignal being made of ſeeing more ſtrange ſhips to leeward?—I do not recollect this circumſtance.

If the Britiſh fleet had purſued thoſe three ſhips, and ſuppoſing the French fleet to have been in the ſame direction they ſteered, was there not a probability of ſome of our undamaged ſhips coming up with thoſe three ſhips, or the diſabled ſhips of the French fleet, and have taken them if the French fleet had abandoned them, or if they had

had ſtaid by them another engagement might have been brought on? —That being a matter of opinion, I beg leave to decline an anſwer.

Do you remember what weather it was that morning?—Moderate.

Preſident. How many knots could the ſhips have goue with all their ſail?—That muſt depend on the claſs of ſhips.

In general?—Between ſeven and nine knots.

Do you know what time the French fleet went off in the night?—I do not.

Were any ſignals made in the French fleet that night?——I do not know.

What diſtance was the port of Breſt from you on that morning?—Uſhant, at twelve at noon, lay North 81. Eaſt lat. 48. 11; diſtance might be by the reckoning of the Formidable 45 leagues; but afterwards we found we had been 13 leagues nearer.

Sir Hugh Palliſer. Being the middle of ſummer, ſhort nights, and moderate weather, do you apprehend it would have been attended with any imminent danger, if the Britiſh fleet had purſued that of France, for the chance of coming up with ſome of them, at leaſt ſo far as ſeeing them into port?--It appeared to be no imminent danger.

If you, Sir, had had an engagement with a ſingle ſhip, at that diſtance from Uſhant, and had beaten her to occaſion her to run away, don't you think that you ought to have purſued her till you ſaw her into port, or make the land, all your lower maſts being ſtanding?—With a ſingle ſhip I ſhould not have heſitated a moment.

Here the proſecutor cloſed his evidence with the witneſs.

Admiral Montague. In the courſe of your evidence you ſaid, that the chacing ſhips came into action ſeparately, unconnected, and at diſtances, do you know the cauſe?

The witneſs here requeſted leave to refer to what he had ſaid the day before upon this point.

Admiral Keppel. Mr. Preſident, I have hitherto indulged witneſſes in this liberty; from this moment I object to it. Advantages have been made of the indulgence, which have *affected* me, *and I have particular reaſons in this evidence for objecting to it.* I muſt examine him *very cloſely*; and as I find that my lenity, in ſome inſtances, has been abuſed, I claim that right which I preſume I enjoy to object to it.

The Preſident immediately declared, that it was his opinion the witneſſes could only have this liberty from the indulgence of the priſoner, and that therefore it was now withdrawn. But that it might be the unanimous conſent of the Court, they withdrew upon the queſtion. On their return, the Judge-Advocate read the reſolution of the Court, which was, that no witneſs ſhall have recourſe to what he may have anſwered before.

Sir Hugh Palliſer intreated the Court to be very tender of Captain Bazely, and not to permit him to be treated with any unuſual ſtrict-

neſs; ſince comments had frequently been made upon what a witneſs ſaid in the courſe of examination, he ſaw it was neceſſary for him to intreat the Court to take Captain Bazely into their protection. On this a queſtion aroſe, and the Court again retired, to conſider the propriety of this requeſt. After having been out a conſiderable time, they returned, and the Judge-Advocate read the reſolution, which was, " that as the words of the proſecutor preſumed an inſult to the Court, in ſeeming to infer that they would not take this, and every other witneſs, into their protection, it was reſolved the words could not be inſerted in the minutes of the trial."

Admiral Montague's queſtion was then repeated.—It appeared to me to be owing to their having chaced by ſignal in the morning.

Admiral Montague. The laſt part of the queſtion is not anſwered. Could they not have got into their ſtations in the line after they had left off chacing?—I cannot tell.

Did the two ſhips which you ſay went a-head, and joined the center diviſion, do ſo by ſignal from the Commander in Chief?—Not that I know of.

Did the Vice of the Blue make ſignals for them to come into their ſtation when he ſaw them go a-head and join the center?—No.

Then if he had made thoſe ſignals, and they had obeyed it, do you not think that his diviſion would have been better ſupported?—I do.

You have ſaid the neareſt ſhip you can recollect in the Vice of the Blue's diviſion to leeward of the Formidable, nearing the Ocean, and the four ſhips a-ſtern of the Formidable, before the action began, were at a diſtance from each other, and half a mile aſunder, and that the damage the Formidable received was greater than if ſhe had fought with the body of the Vice of the Blue's diviſion; do you not think that if he had made the ſignal for the four ſhips a-ſtern to cloſe the line, and come nearer to each other, and likewiſe nearer to him, agreeable to the 7th article of Admiral Keppel's fighting inſtructions, they would have ſupported him, and taken off a great deal of the fire from the enemy?——In the firſt place I do not recollect what the 7th article is.

Admiral Montague. It is a pennant at the croſs-jack yard-arm, if a-ſtern; if a-head, at the gib-boom end.—It appeared to me, that if the ſignal had been made for the ſhips a-ſtern to cloſe the Vice-Admiral, they could not have done it more expeditiouſly than they did.

I mean after they came into action?——After the Formidable had begun the action, I anſwer for no ſhips except one, that which paſſed under our lee when we were going down the French line.

Was the van of the Vice-Admiral of the Blue's diviſion a-head of him to ſupport him during the action?—I don't apprehend the queſtion with reſpect to the van, as the fleet were not in a line.

Were any of the Vice of the Blue's diviſion, that ought to be a-head, a-head of him?—I can only anſwer for two ſhips that paſſed the Formidable before the action.

What

What ſhip did you follow in the action?—I cannot recollect.

How far was the neareſt ſhip a-head of you juſt before you came into action?—A good half mile.

Do you know whether ſhe was one of your diviſion?—I do not.

Did you ſee, on the 27th, any act in Admiral Keppel that indicated a flight from the enemy; or did you ſee the French fleet purſue the Britiſh and offer it battle?—The Britiſh fleet ſtood on the ſtarboard tack forming their line, the enemy on the ſame tack forming their line; whether that has the appearance of a flight I beg to ſubmit to the better opinion of the Court.

Admiral Keppel is charged with negligently performing his duty as an officer. Acquaint the Court in what inſtance you obſerved him not to perform his duty on the 27th of July?—I do not hold myſelf a competent judge of the conduct of an officer in ſo high a command. I came here as an evidence, not as a judge.

I do not aſk you as a judge, far from it; it is a fair and direct queſtion. I do not aſk for your opinion, but your knowledge?—— I beg to decline anſwering it. I am too young a man and too young an officer to anſwer that queſtion.

Then, Sir, did Admiral Keppel, ſo far as came within your knowledge, by his conduct on the 27th or 28th of July, tarniſh the honour of the Britiſh flag?—I alſo beg leave to decline anſwering that queſtion for the reaſons aſſigned.

Admiral Roddam. You ſay the French ſeemed to intend to renew the action, what was your reaſon for ſo thinking?—The French fleet forming their line to leeward of the Britiſh fleet.

When they were forming a line on the ſtarboard tack, if they had intended to renew the action, could they not have fetched within diſtant ſhot of the Britiſh fleet, and engaged if they pleaſed?—They could.

You ſay you expreſſed your opinion, that you judged the Commander in Chief did not intend to renew the action that afternoon, after hauling down the ſignal for battle; what were your reaſons for ſo judging?—Standing from them, and carrying ſo much ſail, that we could not keep up with him, or preſerve our diſtance.

Did you from the Formidable ever make any ſignal that you could not keep up with the Admiral?—No.

If you had made any ſuch ſignal, do you not think the Commander in Chief would then have ſhortened ſail?——It appeared to me the ſtate of the Formidable was ſo apparent, there required no ſignal.

Is it the Commander in Chief's buſineſs to look after other ſhips, or are they to look out to him?—The junior officers are to look out for their ſignals, I can anſwer for no more.

Was not the ſignal for the line of battle out while the Victory was ſtanding towards the enemy?—I neither ſaw it, nor heard of it.

Why did not the Formidable fire at the French ſhips which you ſay were ſo near you in the morning of the 28th, which would have

ſhewn the Admiral they were ſo near as one mile?—I muſt beg leave to ſubmit that queſtion to the Vice-Admiral.

Did he give you any orders?—No.

Captain Duncan. Was theFormidable, at any time of the day of the 27th, in any ſuch condition as not to be manageable?—No.

Queſtions by Admiral Keppel.

Captain Bazely has, upon ſome occaſions, refuſed to give his opinion, and in others he has given it, which is not quite conſiſtent; he has given it as his opinion that the Admiral did not mean to renew the action, and he has given it as a reaſon for that opinion, that he carried ſo much ſail; then I beg leave to aſk him what ſail the Admiral did carry when he ſtood to the ſouthward, on the 27th of July in the afternoon?—I cannot particularly recollect the particular canvas you carried; my reaſon for ſo ſaying was the Victory's fore reaching the Formidable.

Were the Victory's top-gallant ſails ſet?——I do not think they were.

Were her main tacks aboard?—I did not ſee her main-ſail ſet.

Were the reefs out of het fore-ſail?—I cannot ſay.

Were her gib or ſtay-ſails ſet?——The ſituation of the Formidable was ſuch that it is impoſſible for me to ſay what ſails were ſet.

Pray then inform the Court how you know that the Victory had much ſail ſet?—I mean to explain myſelf about much ſail.

Admiral Keppel. A direct anſwer.

Witneſs. As the Admiral has declared he means to examine me cloſe, I beg leave to recollect myſelf. In the diſabled ſtate the Formidable was in, what I have related to the Court is true, with reſpect to the Victory's being at that time, to the beſt of my recollection, under her top-ſails and fore-ſails.

Did not that ſail ſuffer the French leading ſhip to range up abreaſt under her top-ſails, being parallel to the Victory?—To the beſt of my recollection, the van of the enemy's fleet appeared to me to be a-breaſt of the Victory about dark. The van of the enemy had only their top-ſails.

At what time do you ſtate the Vice-Admiral of the Red ſhould have been called down to join on the larboard tack?—I do not pretend to judge, but the time the Vice-Admiral of the Blue alluded to in his queſtion appeared to me applicable.

Do you underſtand the whole meaning of the 31ſt article of the fighting inſtructions?——I think I do; I have read it repeatedly.

Was any part of the Britiſh fleet leading with a large wind?—— I do not remember any were.

Thirty-firſt article read. It ſtates, that when the Admiral perceives any ſhips leading with a large wind, he is to hoiſt a particular flag, and fire a gun.

Do you take upon you to ſay the Vice of the Red was not called down by meſſage ?—I do not know.

Do you know how many ſhips he then had with him?—With himſelf I think nine.

That is his whole diviſion, ſave one ?—I apprehend ſo.

You are ſure of nine ?—I cannot be poſitive ; I think ſo.

Was the Vice-Admiral of the Red, at that time, or the Admiral, neareſt to you ?—The Vice-Admiral of the Red, and his diviſion, appeared to me a mile to weather of the Formidable, and the Victory two miles diſtant when we paſſed the enemy's rear.

Was this the time you thought the Formidable might be cut off by the enemy's rear ?—No, Sir, not after we paſſed them.

When was it ?—Before we opened our fire it appeared to me very probable.

Do you know the ſtate of the center diviſion, and Vice of the Red, when they came out of action ?—I know of none but my own ſhip.

Do you then feel yourſelf juſtified as an officer, in ſwearing that the action might have been renewed to advantage for us, as ſoon as the Vice of the Blue came out of action, if the Admiral had wore and doubled on the enemy, with the reſt of the ſhips, at the ſame time and diſtance as the Formidable did ?—I have ſaid, that had the Vice of the Red and his diviſion bore down, and if the Admiral had advanced with his diviſion to have renewed the action, it would have obſtructed the enemy from forming a line ſo ſpeedily.

That does not anſwer my queſtion.—That is the anſwer I wiſh to give, and muſt give.

Do you take upon you to ſay then, uninformed of any ſhip but your own, that the Admiral had a ſufficient number of ſhips along with him near enough to ſupport him on the larboard tack, formed in the line, to have prevented the French fleet forming their line on the ſtarboard tack ?——I don't recollect the Admiral being, in the afternoon of the 27th, in a line with any ſhips with him on the larboard tack.

When the Formidable paſſed the Victory while the Admiral was on the larboard tack, were there any ſhips a-head of the Victory with her on the ſame tack ?—I don't recollect any.

At what time did you ſee the Vice-Admiral of the Red formed in a line in the rear of the Britiſh fleet, on the ſtarboard tack, on the afternoon of the 27th ?—I cannot ſpeak to time.

Then you don't recollect when he quitted the ſtation in the rear in forming the line a-head ?—No.

You ſaw him in the Admiral's rear ?—Yes.

What then was the ſituation of the French fleet when you ſaw him? I think forming a line a-ſtern of his, and to leeward withal.

What was the ſituation of the Vice-Admiral of the Red to the Vice of the Blue ?—He was formed rather to the lee-beam of the Formidable, at no great diſtance to leeward, and a-ſtern of the Victory.

What curſe muſt the Formidable have ſteered from the wind to have come into the Admiral's wake in her ſtation?——That depends on circumſtances, as the weather, her advancement then towards the wake.

Did you ever ſet the Victory?—Not that afternoon by compaſs.

Were there any minutes kept of the bearings of the Admiral of the ſignals or any thing about him?—Not of the bearings, but of the ſignals very incorrect ones, which I am ready to explain.

Who took them?—Two midſhipmen. The Admiral took their names.

Where are they?—I never ſaw them after the battle.

How then do you know they are incorrect?——By the maſter's report.

FOURTEENTH DAY, FRIDAY, *January* 22.

CAPT. BAZELY, of the Formidable, was again called, to be croſs examined by Admiral Keppel.

Admiral Keppel. By whoſe nomination were the midſhipmen appointed to obſerve ſignals?—By the Vice-Admiral's.

Had not the midſhipmen who were appointed the beſt opportunity of taking them correctly?—That I cannot anſwer to.

Did they acknowledge at any time, and when, that their ſignals were erroneous?—They never did to me, nor I to them.

Was it the maſter that took upon him to enter the minutes in the log-book different from what they gave them?—I don't know that the log-book differed from the minutes taken by the midſhipmen, but that I obſerved there was very little mention of ſignals in the log-book.

Pray can you ſtate to the Court the difference?—I cannot; I wiſh to explain myſelf with reſpect to the incorrectneſs of theſe minutes; there were omiſſions ſupplied, but no eraſements were made.

Can you take upon you to ſay, that the minutes and the log-book differ or agree with reſpect to ſignals?—I cannot ſay.

Does Captain Bazely know where the minutes are?—Since leaving the Court yeſterday I have enquired of the maſter, and the different officers, if they knew any thing of the minutes of the ſignals, and I am informed that a Mr. Perry, late midſhipman of the Formidable, and now lieutenant of the Triumphant, at Chatham, had taken theſe minutes out of the ſhip, which I had never heard of till this morning.

Was you told when they were delivered to Mr. Perry?—Yes; when Mr. Perry was appointed to obſerve ſignals on the ſhip, Mr. Hoggart and the other were appointed to do duty of mates of the ſhip.

In

In the morning of the 27th of July, how far were the ſhips to leeward that were ordered for chacing?—About half a mile on the Victory's lee-bow, and not quite a mile a-head withal.

Do you recollect what ſail ſhe was under?——At what hour in the morning?

At day-light.—Cloſe reefed top-ſails, fore and main-top-maſt ſtay-ſails, and the fore-courſe. At the time the ſignal was made to chace to windward, the main-ſail was ſet, and two reefs let out of the top-ſails.

You have ſaid, that the Vice of the Blue was in a proper ſituation to take his ſtation in the line of the larboard tack, had the ſignals been made for that purpoſe. I would aſk you whether the Formidable, and the reſt of the diviſion, could have got right a-head of the Victory, without making a-board, or the Victory making down to leeward of them?—I apprehend the Formidable could not have got quite a-head of the Victory, without making a-board; or that the line could have been completely formed on that tack without the Admiral's edging away for that purpoſe.

Was not the Vice of the Red and his diviſion conſiderably to windward of the Victory?—To the beſt of my recollection, on the weather quarter, and a-ſtern withal of the Victory, three miles diſtant from the Formidable.

Muſt they not have bore down alſo as far to leeward of the Admiral as the Formidable, and thereby increaſed the diſtance of the whole fleet from the French?—Yes.

When the ſignal was made for the whole fleet to tack that morning at ten o'clock, did the Formidable tack at the ſame time that the Victory did?—I think ſhe did.

You are not ſure?——I think ſhe did.

At what hour did the Formidable back her mizen top-ſails when drawing near the enemy?—I cannot anſwer particularly to the time.

You have ſaid the mizen top-ſail was backed to prevent you from getting into the Ocean's fire. How long was it backed?—Till ſhe paſſed the French line.

Were not the ſhips a-head of you joined with the center when your mizen top-ſails were a-back, ſo as that ſome of them were obliged to paſs to leeward out of the line, on account of the ſhips a-ſtern preſſing upon them, meaning a-head and a-ſtern of the Formidable?—To the ſhips a-head I cannot ſpeak, only to one ſhip that paſſed under the Formidable's lee, as ſhe was running down the French line.

Do you know the ſhip that bore away under the Formidable's lee?—I do not.

Do you know what ſhip was next a-head of the Formidable during the action?——No.

Did you not back your mizen top-ſail for the Ocean?——Yes, and as well for the ſhips a-ſtern to cloſe.

How

How many of the French ſhips did you paſs a-ſtern of the French Admiral after you began the engagement?—I did not count the ſhips at a while we were running down the French line.

May I aſk where you was yourſelf at the time of running down the Frenc line?—On the fore-part of the quarter-deck on the ſtar-board ſid

Lookinat the enemy?—Yes.

How many three-decked ſhips had the French?—There appeared to me tw

Were they tolerably near together?—That I cannot anſwer.

How many French Admirals were there tolerably cloſe together? I cannot ti.

Was thirregularity of the French line the cauſe that the Formi-dable engaed at different diſtances, or did the Formidable at times bear away—The Formidable did at one time in the action going down beamp a little to get away from one of the enemy's ſhips, whoſe gib-oom nearly touched the Formidable's main-top-ſail.

Did thaship which was ſo near, give a warm fire into the Formi-dable?—N ſhe appeared to be ſilenced before we reached her.

Then wanot the Formidable and the ſhips a-ſtern ſuccoured and ſupported b the ſhips who had engaged the French ſhips before them?—W certainly received leſs of the enemy's fire in conſequence of the centr and the Red diviſion paſſing before us.

As you hve ſaid that the Formidable wore after paſſing the rear of the Frenc line, on ſeeing the Admiral advancing towards the enemy on thlarboard tack, and that the officers and men on board the Formidale were ordered to quarters, expecting to renew the battle when te Admiral came up, I deſire to know whether the For-midable did nt wear again without ſignal, and paſs a-ſtern of the Admiral whil his head was toward the enemy?—Yes.

When you aſſed the Victory, was the ſignal for the line of battle flying?—I beleve it was.

When the Vce-Admiral of the Red and his diviſion made ſail to get into his ſtaion, after being rear of the Admiral on the ſtarboard tack, did he ne paſs between the Formidable and the centre diviſi-on?—I do not recollect.

You think yo ſaw the ſignal for the line of battle on the Victory as you paſſed he. Can you ſay it ever was hauled down?—I can-not charge my nemory.

Don't you know when the ſignal for the line of battle was hoiſted on board the Formidable?—I do not.

Are you poſitive it was flying at five o'clock on board the Formi-dable?—I think it was, but I cannot ſpeak poſitively to that.

How do you know the time that the Fox came to the Formidable, when you ſay that you never obſerved time?—I judged it to be near ſun-ſet.

What

What was the confuſion you ſpoke of on board the Formidable? —Nothing more than what was natural to happen to a ſhip coming immediately out of battle.

At what time do you mean the confuſion happened?—It continued the whole afternoon, in preparing to obey the Admiral's ſignal.

When you beat to arms, at two o'clock in the morning of the 28th, was it on the approach of any ſhips to leeward of you?—No.

Where was the Formidable at two o'clock in the morning, with reſpect to the Admiral?—A-ſtern, and to windward withal.

Did you ſee the Admiral's lights during the night?—Yes; moſt part of the night.

Were the diſtinguiſhing lights of the Formidable burning at that time?—No, they were not.

Were there any ſhips between the Formidable and the French ſhips he ſaw in the morning of the 28th?—I ſaw none.

Preſident. I think you ſay the Fox cheered the Formidable firſt, and that you was upon the forecaſtle; can you take upon you to ſay that there was no cheer from the poop or quarter-deck of the Formidable, at the time the Captain of the Fox delivered the meſſage from the Admiral?—None that I heard of.

You ſay that in a ſingle ſhip you would have purſued a French ſhip into port, if after having been engaged with her you had ſeen her at the diſtance the neareſt of the three French ſhips was from the Formidable; I aſk you whether if the Formidable had been that ſhip, in the condition you have depicted her, when the ſuppoſed ſhip ran away, would you have purſued her upon a lee-ſhore? —The ſituation the Formidable was in, I would not have heſitated a moment to purſue her into port, if I had I ſhould not think myſelf juſtifiable in a ſingle ſhip.

I mean in the condition the Formidable was in when ſhe left off engaging, I ſay again in that condition, and on a lee-ſhore, would you have purſued her?——Knowing myſelf upon a lee-ſhore, it depends upon the courſe I was ſteering, I do not know that coaſt, if I was upon a lee-ſhore, I would not have purſued; but what I call a lee-ſhore, is when the wind blows on the land, and I can ſee it.

Admiral Montague. From the ſtrange account which Capt. Bazely has given of the minutes of the Formidable, I was led to look into the log-book, and I find three leaves cut out, including the time from the 24th to the 28th of July, and a new leaf inſerted with a pack-thread, which contains a relation of the buſineſs on thoſe days.

I ſhall be glad to know, Sir, how theſe three leaves came to be cut out of the Formidable's log-book?——I do not know, ſo help me God.——Ordered to withdraw.

Sir RICHARD BICKERTON, of the *Terrible*, was then called by the proſecutor.

Sir Hugh Palliſer. At what hour did you firſt ſee the French fleet on the morning of the 27th?—At five o'clock.

Did they appear to you any time that forenoon to be in a line of battle?—They did.

At what time had they that appearance to you?—Soon after I tacked; but I muſt obſerve to the court, that when I ranged along them I found they were not in that regular line of battle which I at firſt believed.

Do you remember ſome of the Vice of the Blue's diviſion that morning chacing to windward by ſignal?—I do, about ſix o'clock; about four.

Do you remember whether there was not more than four chaſed when thoſe ſignals were thrown out?——I do not know, I did not chace then, my ſhip was not one of the four.

Court. Do you know the names of the four?—Only of two, the Egmont and Robuſte.

Were there not two more ſignals to chace?—I believe the Worceſter's ſignal was made at the time the ſignal was made for the Terrible.

Did thoſe ſignals cauſe that part of the fleet to be diſperſed, and ſeparated from their flag, and each other?—It certainly occaſioned them to ſeparate.

On the morning of the 27th of July, was the Vice of the Blue, with his diviſion a-head of the Admiral, ſome on his lee-bow, ſome to windward, or how were they ſituated?—I think the Vice-Admiral of the Blue was a little to leeward of the Victory, and towards the lee-beams. The Terrible on his larboard bow.

Preſident. Was the ſignal that was out, a means of bringing them to action ſooner, or did it prevent them coming to action at that time?—It was a means of their fetching farther to windward, and engaging more of the enemy.

Sir Hugh Palliſer. Was there any ſignal made for the whole diviſion to chace?—I did not ſee it.

When ſhips chace from different ſituations, and which differ in their rates of ſailing, can they one and all come into a ſituation to tack together?——I think not.

Was it not the Admiral's practice, when ſhips were chacing, to make the ſignal for them to tack when he judged proper for them ſo to do?—I do not remember he made it a practice.

Did the Admiral make ſuch ſignal that morning?—I did not ſee it.

Preſident. Then I ſuppoſe you tacked according to your own judgment?—I certainly did.

Sir Hugh Palliſer. Did you tack before the general tack by ſignal?—I tacked a little before.

If thoſe ſix ſhips had not been taken from the Vice-Admiral, might not the whole of that diviſion have gone into action, together with their Admiral, in a connected body, to ſupport each other, at the time the Vice-Admiral himſelf did?—We certainly ſhould have been more connected, had we not chaced.

Preſident.

Preſident. Were you cloſe upon a wind when you firſt began to engage?— Cloſe upon a wind the firſt ſhip, but afterwards were obliged to keep away.

When your ſignal was thrown out to thoſe, were you to windward or to leeward of the Vice-Admiral of the Blue?—I have ſaid before I was upon his larboard bow.

Did not the chacing ſhips, ſo far as you know, come into action ſeparately, without any other being near enough to ſupport each other, as far as you know?—There were three ſhips a-ſtern of me, which appeared to be pretty near together.

Do you remember a time when the Terrible, in the thick of the ſmoke, run cloſe on the Formidable's ſtern?—I remember the Formidable coming acroſs me when I was engaged with the ſhip a-head of the Bretagne.

Do you know if any of the chacing ſhips paſſed a-head of the Vice of the Blue, and joined the centre diviſion?—I do not.

At a time when you was ſo near to the Formidable, did you ſhoot a-head of her, or remain a-ſtern?——I remained a-ſtern for ſome time, but was afterwards obliged to bear up to prevent being aboard.

Admiral Montague. Was the Formidable's mizen-topſail a-back at that time?—I do not know the exact time, but I ſaw it a-back.

Did you ſee it a-back before you ſhot a-head of her?——I really do not know.

Captain Duncan. Were there any of our ſhips near you a-ſtern at that time?——I did not obſerve any. There was one to leeward near us.

Sir Hugh Palliſer. In proceeding along the French line, did not our ſhips go large from the wind?——They went from the wind.

When you ſhot to leeward of the Formidable, how many ſhips of the Vice of the Blue's diviſion remained a-ſtern of him?—I know of none but the three chacing ſhips.

Were they cloſe up with him?—I did not take notice.

Did you ſhoot a-head of her?—Yes.

Did you find any other ſhip near to her there?——The America was very near to her.

Did you and the America go on a-head?—I know nothing of the America the ſmoke was ſo thick. I kept on myſelf, but did not go far a-head.

Was the America on the weather or the leebow?—On the leebow.

When you proceeded along the enemy's line, if it was not perfect, was it other than might be expected, after having paſſed with a number of ſhips that had paſſed before?—I do not know.

When you had paſſed the rear of the enemy's fleet, did you obſerve where the Admiral and the Vice of the Red were?—They were a-head of the Formidable.

Which way were they ſtanding ?—Towards the enemy.

At what diſtance were they ?—I cannot ſay.

With what part of the French line did you begin to engage ?—— The third ſhip.

By your deſcription of the van and centre diviſions being pretty well together, was not the Admiral of thoſe diviſions well ſupported with the whole force of their diviſions ?—At the great diſtance I was from them, I think they were.

From the ſeparation of the Vice-Admiral of the Blue's diviſion, did he go into action as well ſupported as the other flag officers ?— I believe not.

Was he as well ſupported during the whole, or at any time of the action ?——It is not in my power to anſwer that.

When you paſſed the rear of the enemy's fleet, did you obſerve where the Admiral and his diviſion were, and where the Vice of the Red and his diviſion were ?——They were a-head of the Terrible, ſtanding towards the enemy.

Did the Admiral, with the ſhips with him that paſſed the rear of the French fleet, wear ſo near to the enemy, as to be ready immediately to renew the fight, when the Vice of the Blue came out of it, or to countenance and ſupport him, whilſt he remained engaged with the few ſhips with him, when the Admiral had paſſed the whole ?—The ſhip being greatly diſabled, I was anxious to get her ready to renew the attack, therefore did not obſerve.

From the very briſk fire kept up by our ſhips, do you not think the French ſhips muſt have ſuffered in proportion to ours ?——Some of them appeared to be diſabled and others did not.

Preſident. Inform the Court of ſome of the material damages you received in your maſts, ſails, and rigging ?——Fore-yard ſhot through about fifteen feet from the larboard yard-arm, main-maſt two ſhot in it, main-top maſt one ſhot through, the mizen-maſt ſhot through and carried away one-third of it, mizen-yard ſhot through, the rigging in general very much damaged, main-top and fore-ſails cut to pieces, the other ſails much damaged, five ſhot in her hull, which occaſioned her to make much water, and obliged me to ſtand longer on that tack that I would.

Admiral Montague. You have juſt now ſaid the French fleet were ſome of them diſabled. Were the Engliſh ſhips in a condition to renew the attack at the time the Vice of the Blue ſpeaks of, which was immediately after he came out of action ?—From what appeared to me, I do not think they were.

Was your ſhip in a condition ?—She was not.

Sir Hugh Palliſer. Suppoſe you had been engaged along-ſide of a ſhip on the ſame tack not paſſing on contrary tacks, was not your ſhip in condition to continue the action in that one till it had been more deciſive ?—I certainly ſhould have continued the action as long as I could.

Was

Was your ſhip in that condition that you would have been under a neceſſity of quitting the ſhip you muſt have been ſo engaged with? —No; for I ſhould not have quitted the ſhip while I had any ſtearage way, or guns mounted.

Admiral Arbuthnot. You have deſcribed the Vice of the Blue in the morning of the 27th, to be to leeward of the Admiral. If the Admiral had then bore down in the Vice-Admiral's wake, to form the line, as the wind then was, do you think the enemy would probably have been brought to action on that day?—That muſt depend entirely on the enemy; but I believe that if the Admiral had bore down in that manner, we ſhould not have brought them to action, as they always avoided coming to action.

Admiral Montague. Did you not come into action as ſoon, although you chaced, as you would have done provided the Admiral had made a ſignal for a line of battle, and you had not chaced?—I believe ſooner.

Sir Hugh Palliſer. Do you remember what part of the French fleet the Formidable began the action with?—I never ſaw the Formidable in action till ſhe began with the Bretagne.

What ſhip did the Victory begin action with?—I really cannot tell. If the Victory had been there, there is no doubt but ſhe would have engaged where the Formidable did.

Admiral Montague. In the ſituation you was, ſo far diſtant from the centre and van, could you be a judge whether they were ſupported or not, how they engaged, or with what ſhips they engaged? —It was impoſſible.

Sir Hugh Palliſer. If the Victory did not begin cloſe action as far a-head of the Admiral as the Formidable did, would ſhe not have been in a more advantageous ſituation for attacking the enemy, if ſhe had been in a line with the Formidable?—I have ſaid before, that if the Victory had been where the Formidable was, ſhe would have begun action as the Formidable did.

I aſk you, as an old officer, and one that knows the ſervice well, whether you underſtand that a flag officer of a diviſion has a right to call ſhips in from chacing, after the Commander in Chief has ſent them to chace, without the Commander in Chief firſt makes the ſignal for calling them in?——I have never ſeen that done.

From the diſcipline of the ſervice, do you think ſuch flag officer has a right to do ſo?—I do not know.

Admiral Montague. I beg leave to aſk Sir Richard Bickerton, in the ſituation the French fleet were then in, and the wind came ſo far favourable as to enable the Britiſh fleet to bring them to action, although the ſignal had been made to chace and no object in view but the French fleet, do you not think it your duty as an officer to return to the Britiſh fleet, and get into your ſtation as ſoon as poſſible? —I do think it was my duty; and I did ſo. When I firſt ſaw the Admiral make the ſignal for the chace, I mentioned to my officers that the intention of that ſignal was to bring the enemy to action at all events; and as ſoon as I ſaw the wind become favourable, and

that

that we brought the enemy's laſt ſhip very near a-head, I tacked, and thought it my duty to join the line as ſoon as poſſible.

Sir Hugh Palliſer. Did you think it your duty to get into action as ſoon as poſſible under that ſignal?—I have ſaid before I thought it my duty to go into action.

Now do you think the Vice-Admiral of the Blue could have been authorized in calling in thoſe ſhips that were chacing to get into their ſtation, the Commander in Chief having made no ſignal for that purpoſe?—I don't know.

Did you notice the Formidable, when engaged, or after?—I took notice of her when we bore up, when we came out of action.

How ſoon, or when, after the action, did you take notice of the ſhe being the flag of your diviſion?—About three in the afternoon, I think.

At what time was the ſignal for battle flying?—I do not know.

Where was the Vice of the Blue when you ſaw him at three o'clock, with reſpect to the reſt of the fleet?—I really cannot tell.

At what time do you remember ſeeing him when you can remember where he was?—After I wore, I think I went to the windward of him in my ſtation.

I think you ſay the Admiral, when you firſt ſaw him, was towards the enemy?—He was.

Did you ſee him wear to the ſouthward?—I did not; I continued on the ſame tack, being unable to change it, owing to my defects, I could not therefore ſee the Admiral then, but while on that tack I think I paſſed to leeward of him, and cheered him.

Where was the Vice of the Red when the engagement ceaſed?—To windward of the Admiral a little, I think.

Did you obſerve when the French broke up their line, and began to ſtand to the ſouthward?—No.

When did you firſt ſee any of them ſtanding to?—A little before I wore.

Was not the Vice of the Blue and his diviſion in the laſt that came from action, or what other ſhips?—They were the laſt.

While you ſtood with your head to the ſouthward, was the French fleet a-ſtern?—We lay to, but did not ſtand to the ſouthward; I cannot ſay whether they were coming to, or falling off.

Did the fleet with the Admiral ſtand to the ſouthward all that afternoon?—Yes.

Did Sir Robert Harland bear into the Admiral's wake that afternoon?—I do not recollect indeed.

Did you ever know, during your ſervice, whilſt the ſignal for line of battle a-head was flying, the Commander in Chief, order the van or center diviſion to take place of the other, without knowing one of them was diſabled to take their proper ſtation?—No.

Which

Which diviſion, according to the line of battle was to lead on the ſtarboard tack ?—The Vice of the Red.

Was there a ſignal for ſhips to windward to bear down to a number of particular ſhips pennants flying ?—Yes.

Was the Terrible's one ?——Yes.

Do you remember that when I ſaw you after, you ſeemed concerned that it ſhould be thought requiſite ?—I remember it.

Do you recollect when you got down among the ſhips that you was not able to keep your ſtation out of other ſhips way ?——I believe I do.

What time did you bear down ?—A little before ſeven.

Where then was the van of the French who were forming then a line to leeward ?—Before the wind.

What ſail had the Victory that afternoon when you looked at her? —I don't recollect.

Do you remember any ſignal by the French fleet that night, and at what time ?—There were ſome falſe fires at eleven.

Were they pretty near you before the ſignals were made?—About, I think, three or four miles off.

What part of them was in ſight next morning ?—Three ſail.

Line of battle ſhips or frigates ?—I took one to be line of battle, the other frigates.

How near was the neareſt to the Terrible ?—Four or five miles.

In what poſition were they from the Terrible?—Upon the larboard quarter.

At what time was this?—Soon after dawn.

Which way ſtood they ?—Southward.

Did they croud ſail and bear away more after, or how ?——They did bear away as ſoon as they diſcovered us.

Were they purſued ?——Not that I ſaw; there were ſignals out for ſhips to chace, which were ſoon called in again.

Was any other part of the French fleet ſeen that morning ?—I did not ſee any.

Do you know of any ſignal being made at ſeeing any ?——I do no.

Suppoſe the Britiſh fleet had chaced thoſe three ſhips, and ſuppoſing the reſt of the French fleet to have been to leeward, was there not a probability of our able ſhips coming up with theſe three ſhips, or the diſabled French ſhips, if the reſt left them, or if they ſtayed by them, might not another action have been brought on ?—I think not.

What weather was it that morning?—Rather hazy, the wind was not extreme, the ſea tolerable.

What reaſon have you to think if the three ſhips had been chaced they might not have been taken by our able ſhips?—There appeared to me very few able.

None?——There might be a few.

You ſuppoſe two of them frigates; had we not four frigates?——We had, ſome with copper bottoms.

Then it being the middle of ſummer, the nights ſhort, and wind low, would it have been attended with any imminent danger if the Britiſh fleet had purſued, at leaſt till they had ſeen the French fleet into port, none of ours having loſt their maſts?—Carrying a fleet on a lee-ſhore, diſabled as ours was, muſt have been very dangerous. Uſhant bore E. and by N. 34, by the maſter's reckoning on that day.

Court. You ſaw the three French ſhips ſtanding to the ſouthward; the medium of the 27th and 28th is about Eaſt half North from Uſhant; do you think if you had ſteered that courſe for Uſhant you ſhould probably have ſeen the French fleet?——We might have ſeen them on the 28th, but at a very great diſtance.

Admiral Montagus. Suppoſe the French fleet had not run away in the night, but continued to lay to leeward, or jogging on with the Britiſh fleet on a parallel line, do you think the Admiral would have attacked them in the morning, although he did not purſue them then, or think it proper to chace the three ſhips ſeen in the morning?——I do moſt certainly think he would.

Admiral Montague. You are an old officer; you have been more than once in action; you ſerved under a very brave man, Admiral Boſcawen; the Admiral now trying, is charged with negligently performing the duty impoſed on him; was he, to your knowledge, on the 27th of July, guilty of this charge?—Ever ſince I had the honour to know Admiral Keppel, and ſerve under him, I have had the greateſt eſteem for him, and the higheſt opinion of him as an officer, and I have ſo ſtill; but as I have given my evidence, the Court muſt judge of the facts I have ſtated, not I.

Then I am to ſuppoſe you do not know of any ſuch neglect on the part of the Admiral?—I muſt beg to move the Court to retire. The Court retired, and reſolving the queſtion proper, the witneſs anſwered, I do not.

Admiral Keppel. Sir, it gives me great uneaſineſs, when I am forced to aſk the indulgence of the Court ſo much beyond their uſual hour; but when I ſee ſuch a ſhameful and alarming circumſtance as three leaves to be cut out of a log-book, eſpecially in ſo material a part, a part that affects my life, I muſt intreat their indulgence, late in the day as it is, that the maſter of the Formidable may be *immediately* called in and examined to that part, and not defer that buſineſs until to-morrow.

Sir Hugh Palliſer. I ſhall, in the courſe of calling witneſſes, call him among the reſt.

Admiral Keppel. I muſt, with the indulgence of the Court, deſire he may be called now.

Admiral Montague. It being ſo exceeding late, I muſt beg that we adjourn until to-morrow, and that the maſter be ordered to attend.

Admiral Keppel. I beg that my *requeſt* may be entered on the minutes. Agreed to.

FIFTEENTH DAY, SATURDAY, *January* 23.

AT ten o'clock the Court was reſumed, when Sir Richard Bickerton, of the Terrible, was again called to be queſtioned by the Admiral.

Admiral Keppel. On what tack were the French fleet when they appeared to you to be in a line of battle at ten o'clock?—On the larboard tack.

Did the Formidable fetch in a-head of the Terrible, of the French fleet?—She did.

How many ſhips of the rear of the French fleet had the Formidable to paſs when you was obliged to beat up and go to leeward of her? I think there were three.

Did the ſhips of the Vice-Admiral of the Blue that were a-ſtern of them, come out of action nearly at the ſame time as the Terrible?—I cannot ſay.

What time did the Terrible come out of action?—About half paſt one o'clock.

Admiral Keppel ſaid he would not trouble him with any more queſtions.

Sir Hugh Palliſer then addreſſed the Court. Mr. Preſident, The cutting the leaves out of the Formidable's log-book was a fact that I was perfectly ignorant of, till it was obſerved yeſterday by a member of the Court. It is a matter which I am anxious to have inveſtigated, and for that purpoſe I have ordered the maſter of the Formidable, and the mate who made the entries, to attend, [They were ordered by the Court to attend] and I deſire that they may be put to the ſevereſt teſt. I wiſh them to be examined by the Court and Admiral Keppel, without any previous queſtions from me.

WILLIAM FORFAR, Maſter of the *Formidable*, was then called and ſworn.

Preſident. You have given in your log-book, and have ſworn, that it is the original log-book which was kept by you, without alteration or addition, have you not?—Yes.

Admiral Keppel. The reaſon why I deſired that the maſter of the Formidable ſhould be *inſtantly* examined, was to prevent any intermediate communication between him and others; therefore I muſt aſk him who was the firſt that informed him the Court had diſcovered any extraordinary appearance in the log-book?—I heard it in a ſhop yeſterday about noon. A woman in the ſhop telling another perſon of it.

Had you any converſation with any body, and with whom, touching the log-book, before the Court roſe yeſterday?—There were ſeveral; I don't exactly know their names.

What time was it thoſe queſtions were aſked you?—When I heard the log-book was called in queſtion, I came into the Court about one o'clock, or two, on purpoſe to be examined, if I had been called.

Can you name nobody that ſpoke to you before you went into the Court?—I met Mr. Bayley, maſter of the Foudroyant, who told me I ſhould be wanted.

Did any body elſe ſpeak to you?——Not till I came into the examining room.

Did any body ſpeak to you in the examining room?——I think Captain Walſingham. He ſaid he ſuppoſed I was there on account of the log-book.

To whoſe houſe did you go after the Court was up?—I went to the houſe next door to the Vice-Admiral's.

Do you live there?—I do not.

Had you any diſcourſe about the log-book after the Court broke up?——Yes.

With whom?——Captain Bazely.

Does Captain Bazely live at that houſe you went to after the Court broke up?—Yes, he ſleeps there.

How long did you remain at Captain Bazely's houſe before you went to Sir Hugh Palliſer?——I cannot juſtly ſay; not long, about half an hour.

How long did you ſtay at Sir Hugh Palliſer's?—

Sir Hugh here interrupted the Admiral with ſaying, that he certainly had converſed with him on the ſubject.

Admiral Keppel obſerved, that as the proſecutor had ſaid, he wiſhed that the witneſs might be examined cloſely, he hoped he would not now defeat that wiſh.

It might be an hour, or an hour and a half.

Who was preſent at the time?——Almoſt all the officers who were on ſhore.

Name as many as you can?—Captain Bazely, Mr. Waller, Mr. Dickſon, Mr. Hills, Mr. Meredith, Mr. Holmes, Mr. Thomas, and Mr. Hartwell; and the two lawyers, Mr. Hargrave and Mr. Aſhley.

Were there any queſtions put to you about the log-book?—Yes.

When were the incidents of the 25th, 26th, 27th, and 28th days of July entered as they are now in the log-book?—The 25th and 26th days were taken from the log-board, and entered on the ſame day they were taken.

The 27th?—The 27th was not entered in that book till a day or two after. I believe it was put in the 30th.

What was the meaning of that delay?—I took it off upon a ſheet of paper from the log-board, to ſhew it to the Captain and the Admiral before I entered it into my log-book.

And was it approved of without amendment, alteration, or addition?——Some things were added from recollection that had been omitted.

What

What were they?—I do not recollect exactly. They reſpected ſignals and time, I believe.

Were there any minutes of ſignals taken by any body, that this log-book was copied from?—There were before the time we came to action.

And were there no minutes taken after that time during the reſt of the day?—None that I ſaw except by recollection.

Are there more than one log-book?—Yes, I have another.

Is that exact as the one on the table?—It is, except in the three ſhips whoſe ſignals were made to chace in the morning of the 28th, that is interlined in the one I have with me.

When was that interlineation?——About the time we came to lye at Spithead.

That circumſtance is not in the log-book upon the table?—I believe not.

Do you know who made out the original minutes out of the log-book of the 25th, 26th, 27th, and 28th?—Yes, one of the mates, Mr. Weekworth.

What was the reaſon of theſe leaves being cut out?—One I ſaw cut out. Mr. Weekworth had ſpilt ſome ink upon it.

What time was it?——To the beſt of my knowledge it was on the 26th.

When were the reſt torn out?——I did not ſee the reſt torn out. I believe they were torn out at the ſame time.

Admiral Montague. Recollect yourſelf. It could not be at the ſame time. The leaves contain the tranſactions of the 27th; they could not be cut out till after that time.—Mr. Weekworth told me he had ruled one of the leaves for two days work, and it could not contain it; he had alſo omitted putting in the midſhipman's minutes reſpecting the ſignals, and that he told me was the reaſon of his tearing the leaf out.

Do you mean relative to the ſignals of the 27th and 28th?——Only the 27th.

Did the mate ſhew you the minutes?—I gave him the book, and he had written them before I came down.

Did you ſee the minutes he wrote it from?——I did.

And do theſe leaves agree with the minutes?—They do.

Do you know where thoſe leaves are?—I do not know; they were thrown away, I believe.

Do you know where the original minutes, from which the entries of the log-book were taken, are?—No.

As theſe minutes of the 27th and 28th were not entered as you ſay before the 30th, how could the mate have entered them before you went down on the 26th?—He took them off the board.

Did the board continue marked from the 26th to the 30th?—No. When he ſpoiled them with ink, he copied them over upon a freſh piece of paper.

Did you ever go to any maſters of the ſhips in the fleet under my command, and aſk to ſee their log-book?—No.

Did you not aſk Mr. Reid, maſter of the Queen, to ſee his log-book, and compared it with the Formidable's?—I went on board of the Queen, and he was writing his log-book, and I looked at it; but I do not remember comparing it with my own.

Had you the Formidable's log-book with you when you was aboard?—Never.

Did you compare the entry from the ſheet that was blotted, to ſee that it was fairly tranſcribed?—I do not recollect I took any notice of it.

Was the log-book, now under your arm, made after the cutting out of the leaves of that on the table, or before?—Copied after the leaves were cut out.

You mean that they were not copied till the 30th?—Yes.

Admiral Montague. After the action was over, did you ſee the minutes taken by the Midſhipman in the book appointed for that purpoſe?—I ſaw what he had made before ten in the morning; he made none afterwards.

All that were kept that day you ſaw?——Yes.

Had you thoſe minutes in your poſſeſſion?—Yes, I had them after the action; the Midſhipman gave me the book.

Did you ſhew thoſe minutes to the Captain, to know if he approved them?—I copied them on the paper I took the log on firſt.

Did you not tell the Captain the minutes taken on the poop were erroneous?——No; I only told him the midſhipman had taken no notice after the action began.

How did you know they were not all taken?—By recollection.

Did you enter them exactly on the log-board, or did you alter them, knowing them to be erroneous?—They were not entered on the log-board in general.

Is it not uſual for the mate, while at ſea, to mark the log-board every hour, and have ſuch remarks of tranſactions as happened in that hour?——It is uſual; but in a fleet the ſignals are ſo many, that a board would not contain them; and our mates, not being accuſtomed to mark the board, they took it from the midſhipman's minutes.

Then how comes it that the midſhipman's minutes were not taken down of that day's work, for there were only two ſignals of all that were thrown out that day taken account of?——I believe the only minutes he took were in the afternoon of the 26th, and the morning of the 27th, and the ſignal for the three ſhips chacing in the morning of the 28th.

From

From what book did you take your materials for working the ſhip's reckoning?—From the board.

Did you take that every four hours from the board, or at mid-day?—I generally worked my reckoning at eight in the morning, for fear I ſhould be aſked any queſtions either by the Captain or the Admiral.

You have ſaid, that two of the ſhip-mates were not expert in marking the log-board, or in writing it in the log-book. Did thoſe two mates conſult with you before they entered on the log-book the tranſactions of the day?——I generally examined the board in the morning, to ſee what had been done in the night, and pointed out to them what was wrong.

Did you give any order, or point out any thing to them that was wrong on the 27th or 28th?——I do not recollect particularly that I did.

Admiral Keppel. Do you take upon you poſitively to ſwear that there were no minutes taken of the ſignals after the action ceaſed, until it was dark?—I ſaw none, except by recollection.

As the midſhipmen were appointed to take and to enter the ſignals in a book, why were thoſe entries diſcontinued on ſo important a day as the 27th?——I can give no other reaſon than that they were epmloyed on other buſineſs.

Admiral Keppel then addreſſed the Court nearly in the following words:—"Mr. Preſident, I ſhall aſk the witneſs no more queſtions, but I cannot with-hold my ſurprize, that the midſhipman who was appointed to take the ſignals that day, ſhould only take notice of the ſignal for chacing in the morning, which the proſecutor dwells ſo much upon, and omit every other ſignal that was made in the courſe of the day for calling thoſe ſhips together. And I muſt alſo remark, that notwithſtanding the proſecutor's addreſs to the Court carried the appearance of candour, in leaving the witneſs to be examined by the Court and me, without any previous queſtion from himſelf, I find it has turned out exactly as I foreſaw yeſterday, when he reſiſted my requiſition for calling the maſter immediately, and that he has been previouſly examined by himſelf and his friends."

Sir Hugh Palliſer then addreſſed the Court in a ſhort apology for his conduct. He ſaid he had not reſiſted his examination, nor ſpoken on the ſubject till it had become the propoſition and the act of the Court to call him; that he wiſhed for nothing more than the diſcovery of the matter, and that he had for this purpoſe diſpatched expreſſes to find the midſhipman who ſucceeded to him, who had been appointed to take the minutes, and in whoſe hands he was told the original minutes were.

Admiral Keppel. I beg to refer to the memory of the Court, whether the proſecutor did not ſay, that the calling of the maſters then would interrupt him in the courſe of his evidence, when I deſired the maſter might be examined inſtantly, to prevent, as I have ſaid, any intermediate communication between him and others.

This

This circumſtance, ſo ſtrongly in the recollection of all the Court, was immediately acknowledged, and Sir Hugh Palliſer offered no further defence.

Admiral Montague. Before I put a queſtion which I have to put to the maſter, I muſt beg the Court's leave to read the narrative from the log-book of the Formidable of the 27th of July, as written in one of the new-inſerted leaves. Mr. Forſar, you ſay, you did not dictate to the mates on the 27th and 28th days of July. I will read the minutes to you, and then I beg of you to inform the Court whether they are your compoſition or their's.

[Admiral Montague here read the narrative. The minutes ſtate, that after having beat about for four days after an enemy, who conſtantly, during that time, had exerted all endeavours to avoid us, we at laſt, by an extraordinary effort, brought them to action, wherein they felt the full force of Britiſh ſuperiority, and were glad in the afternoon to ſheer off, taking the advantage of ſome of our ſhips being diſabled, which prevented the action from being immediately renewed; that, however, they were in expectation, from ſeeing them form their line of battle, that they meant to renew the engagement next morning; but, to their no ſmall ſurpriſe, they were flown before morning, all ſave three ſhips being out of ſight, and which crouded ſail and made after the others as faſt as poſſible.]

The Admiral now propoſed his queſtion. Are theſe your compoſition or the mates' ?—I took the log off the board myſelf, upon a piece of paper, and put down what ſignals I could myſelf. I ſhewed it to the Captain. He deſired me to ſhew it to the Admiral; I did ſo. He approved of ſome places, and diſapproved of others; gave me a piece of paper with ſome remarks that he had made; ſo between the two, I made the log up of that day with what I thought were facts.

Was that log as it is approved by the Admiral ?—It was.

Sir Hugh Palliſer. Do you know, or have you reaſon to believe, that either myſelf or Capt. Bazely had any knowledge of the leaves being cut out before yeſterday, when it appeared to the Court ?——I don't believe you had.

Captain Duncan. At what time did you leave the witneſſes' room yeſterday ?—When the Court broke up.

Do you recollect what time you was on board the Queen, and ſaw the log-book ?—A week before ſhe ſailed the laſt time with Lord Shuldham.——[Ordered to withdraw.]

ROBERT WEEKWORTH, maſter's mate, was then called, but Admiral Keppel ſaid, as the original minutes were to be produced, he would queſtion him at that time.

Mr. KINEER, Firſt Lieutenant of the *Formidable*, and now a Captain of the *Carcaſs*, was called by the proſecutor.

Sir Hugh Palliſer. After the time that the Formidable had ceaſed firing, and had turned her head towards the enemy, do you remember

ber the men being ordered to return to their quarters, in expectation of renewing the engagement, when Admiral Keppel ſhould come up?—Yes.

When did you firſt take notice where Admiral Keppel was?—Not till he wore the ſecond time.

At what diſtance was he?——Between a mile and a half and two miles.

Do you remember the Victory paſſing to windward, and under the Formidable's ſtern?—Yes.

Was the ſignal for the line of battle a-head, or a cable's length aſunder, then flying on board the Victory and Formidable?—It was on board the Victory, but I am not certain as to the Formidable.

Do you remember the Formidable's hauling to windward out of the way of other ſhips, for them to take their ſtations between us and the Admiral, and afterwards to ſtand after the Admiral with all the ſail ſhe could ſet?—I do.

Did not the Victory increaſe her diſtance from the Formidable all the afternoon?—I believe ſhe did in ſome ſmall degree.

Did not the Formidable ſteer the whole afternoon, keeping the Admiral a little to lee?—Yes.

Was that a proper courſe for fetching her ſtation in the line of battle, if the Victory had not ſailed faſter than us?—I think it was.

As the Admiral ſailed faſter than the Formidable in ſome ſmall degree; whilſt ſhe continued to do ſo, was it poſſible for the Formidable to get into her ſtation, according to the ſignal then flying?—I do not think it was poſſible.

Then whatever ſignals might be made, or whatever meſſages might be ſent, was it poſſible for the Formidable to get into her ſtation unleſs the Admiral had waited for her?—I think not.

Do you remember the ſignal being made in the evening for ſhips to windward to bear down; ſeveral ſhips' pennants let fly at the ſame time?—I ſaw them, but cannot ſay whether they were all let fly at the ſame time.

Were thoſe ſignals repeated by the Formidable before or after the Fox came to her?—To the beſt of my recollection they were made before.

Do you remember whether the Fox cheered the Formidable firſt, or the Formidable the Fox?——I am pretty clear the Fox cheered the Formidable firſt.

Where was you ſtationed at that time, carrying on the buſineſs of repairing the rigging?—On the poop.

Did the people on the poop cheer the Fox firſt?—No.

At what diſtance was the Formidable from the Victory that evening at duſk?—I believe ſhe was about one mile to windward of the Victory's wake, and about three miles a-ſtern.

About what time was it, do you think, that the Fox came to the Formidable?——About ſeven o'clock.

Preſident. What was the meſſage ſhe delivered?—I did not hear it diſtinctly.

But what you did hear?——I think the purport was for the Vice-Admiral's diviſion to bear down into the Admiral's wake.

Do you remember any of the ſhips ſignals that had been hauled in, in conſequence of their being anſwered before the Fox came to her?—I remember two of them were hauled in ſhortly after the Fox came.

Are you of opinion, that if the fleet had gone down to renew the action, the Formidable might or not have gone to attack the enemy, notwithſtanding that ſhe could not carry ſail upon a wind?—Yes; but ſhe could not have maintained her ſtation in a line at a cable's length aſunder.

Did the Admiral, at any time in the afternoon, bring her to, to permit the ſhips to come up with him?—Not that I obſerved.

Were not the men employed all that afternoon, and night, in repairing the rigging and ſails?—Yes.

Was all done that could poſſibly be done to keep up with the Admiral?——I believe there was nothing neglected by the officers or Admiral.

Did not the drum beat to arms at two in the morning of the 28th? Nearly about that time.

Were not all hands at quarters, and the ſhip in her ſtation before day-light, immediately to engage?—All hands were at quarters, and the Formidable was in a line a-ſtern of the Admiral; but I cannot ſay whether ſhe was exactly in her ſtation, ready to engage; and we were in expectation of receiving orders to begin firing, when it was diſcovered there were only three ſail in ſight.

At day-light how near was the neareſt of theſe three ſtrange ſail? Till the guns were ſecured, and they had bore away, and then the neareſt was ſomething more than a mile.

Captain Boteler. As you were upon the poop, I ſhould be glad to know if the log was hove from three in the afternoon of the 27th, to four in the morning of the 28th?—I did not ſee it at any time hove, I was ſo much engaged that I could not attend to that circumſtance.

Croſs-Examination by Admiral Keppel.

Captain Kineer ſaid, the Formidable, after having wore towards the enemy, wore backwards towards the Victory, while the Victory was ſtanding with her head to the enemy; did the Formidable wear a ſecond time by ſignal?——I have already ſaid I did not ſee the Victory till the Formidable had wore a ſecond time, conſequently cannot ſay whether there was any ſignal or not.

How was the Victory with reſpect to the Formidable when you did ſee her?——She was on her ſtarboard bow, on the oppoſite point of the compaſs, ſtanding towards her.

Did

Did you then obſerve the ſignal for the line of battle a-head flying on board the Victory?—No.

Did you when the Formidable paſſed her?—No, not till ſhe went under the Formidable's ſtern.

What ſail had the Formidable ſet when ſhe paſſed the Victory?—I do not recollect.

What ſail had ſhe when her head was towards the enemy?—I do not know.

What ſail did the Victory go under the whole afternoon, or any part of it, when you obſerved her?—I took very little notice of the Victory during the afternoon, being engaged in repairing damages.

How did you take notice that ſhe encreaſed her diſtance from the Formidable then?—I obſerved that the Victory was further from the Formidable in the evening, than at three o'clock.

Was ſhe further off than ſhe was at four o'clock?—I cannot tell.

Did you ever ſet the Victory by compaſs that afternoon?—No.

Did the Formidable unbend any of her ſails that afternoon, in order to bend others?—I cannot tell.

Do you remember when the fore-top-ſail was unbent?—I do not.

Do you remember within an hour or two?—No; but I believe they were both ſet by half after eight.

Then you do not know when the fore-top-ſail was unbent?—I do not.

You ſay it was bent, and ſet at half after eight?—I believe it was.

Was there any fore-top-ſail to the yard at half paſt ſeven?——I cannot tell.

Was there any at half paſt ſix?—I cannot tell.

Was there any at half paſt five?—I cannot tell.

Was there any at half paſt four?—I cannot tell.

When did you firſt ſee the ſignal for ſhips to bear into the Admiral's wake?—I believe it was about ſeven o'clock, but I cannot ſpeak to time.

Did you not ſee it ſooner?—I cannot ſay that I ſaw it till the pennants were let fly.

How long was you upon the poop?—I was ordered on the poop about three o'clock, but I am not ſure of the exact time, and was there moſt part of the afternoon.

The log was never hove all that time?—I did not ſee it hove.

There was no want of ſeamen in the Formidable to expedite buſineſs as ſoon as a well manned ſhip could expedite buſineſs?—The Formidable was manned as other ſhips, of ſeamen, landmen, and ordinary men.

Then ſhe was but indifferently manned?—Nothing remarkable either one way or another.

Were they ſober and orderly all that afternoon?—I believe they were ſober and orderly in general. There might be one or two in liquor.

Upon recollection, are you ſure it was ſeven o'clock when the Fox came to the Formidable?——I have not ſpoke to time with any certainty.

Do you think it was half an hour after ſix?—I believe it was later.

Captain Duncan. What ſail did you wear twice under?—The fore-ſail and top-ſail, I believe, only.

Were the top-ſails cut?—I cannot recollect.

You ſaid ſome time ago that on the morning of the 28th one of the ſtrange ſhips was within or about one mile from the Formidable. Did you fire at her, or make any ſignals to the Admiral, or make any preparation for chacing?—I believe I have ſaid that the neareſt of thoſe ſhips were more than a mile. We did not fire at her, nor make any ſignal to the Admiral.

When did the ſun ſet?—A quarter before eight.

Admiral Keppel. I won't trouble him any more.

Captain Duncan. What ſail did you wear the Formidable twice under?—I believe the fore-ſail and top-ſail only.

Sixteenth Day, MONDAY, *Jan.* 25.

At ten o'clock the Court was reſumed, when Capt. Goodall, of the Defiance, was called to give evidence on the part of the proſecution.

Sir Hugh Palliſer. When did you firſt ſee the French fleet on the 27th of July?—About five or ſix o'clock.

Did they appear to you at that time in a line of battle?——They did not.

With what ſhip did you begin the engagement?—With the headmoſt ſhips of the centre diviſion.

Was your ſhip one of thoſe that chaced by ſignal?—It was not.

When you began the engagement, were any of our ſhips then near you ſo as to be of ſupport to each other?—Soon after I began the engagement, I drew up to the Prince George.

Then by drawing near the Prince George, you joined the centre diviſion, did you not?—I apprehend ſhe belonged to the centre diviſion.

Was not your ſhip properly one of the Vice of the Blue's diviſion?—Yes.

In the engagement, did any of the Britiſh ſhips fire over you, or you over them?——No.

When you paſſed the rear of the enemy, where was you with reſpect to the Victory?—The Victory was on my lee-bow.

To what distance did the Victory stand before she wore?—About half a mile upon the Defiance's lee-bow, and she wore soon afterwards.

What distance was the Defiance from the rear of the enemy at that time?—Three or four cables length. I speak of the time when the Victory wore and laid his head to the enemy again.

What distance might the Victory be at that time?——I suppose a mile.

When was the signal for battle hauled down?——About two o'clock, or a quarter after.

Was that before or after the Victory wore?—After.

Did you see any of the ships of the English fleet at that time dismasted?—No.

Did you see the Admiral wear the second time?—Yes.

Where was the Vice-Admiral of the Red, and his division at that time?—They were to windward.

Had they wore and stood to the northward before the Victory?—I think so.

Then were they advanced more towards the enemy than the Admiral was when he wore a second time?——They appeared to me to be so.

When did you first take notice of the Vice of the Blue?—When he was near the Victory.

Did you never take notice of the ships that remained engaged after you came out of the action?—I did not take sufficient notice to retain any idea about them.

Did you know of any reason why the Admiral and the rest of the fleet might not have wore at a nearer distance than a mile or a mile and a half from the enemy?—I do not.

If they had done so, do you know any reason why the engagement might not have been continued or renewed when the Vice-Admiral of the Blue came out of the engagement?—The disabled state of several ships, and the separation of others, was a reason why I think the Admiral could not collect a formidable number of ships to renew the engagement.

Did you know of any other ships being disabled beside your own?—They appeared to me to be disabled in their sails and rigging.

From the brisk fire kept up by our ships, have you not reason to suppose the enemy suffered in proportion to ours?—They did not appear to have suffered so much in their sails and rigging as ours, but I am persuaded they suffered more in their hulls and loss of men.

Would the ships have been scattered and separated, as you have said they were, after the engagement, if there had been a line of battle, which confines every Captain to his station?—They were separated, but not scattered or divided so much as not to be collected in a certain time. They certainly would have been more connected if the two fleets had engaged one another in regular lines.

Preſident. Do you think the engagement would have been brought on that day, if the Admiral had made a ſignal for the line of battle, in the poſition the fleets were in the morning of that day?——No. The Admiral had always offered the enemy battle, and it was in their breaſts to accept of it; and I am ſenſible, if he had formed a line of battle that day, it would have been impoſſible to have attacked the enemy.

Did not the French fleet edge down and make the attack?—They partly edged down, and they were partly met with.

Did they edge down before the engagement began?—I cannot poſitively anſwer that, but I do not think their van did edge down.

Did it appear to you from their forming a new line of battle in the evening, and ſtanding towards the Britiſh fleet, that they were diſpoſed to renew the attack?—It indicated a diſpoſition to receive an attack, but they had it in their power by carrying more ſail to have made one.

How many ſhips did you ſee diſabled in their ſails and rigging after the engagement?—Ten or a dozen of them I ſaw with my own eyes.

Were they not in a condition to attack an enemy that ſhewed a diſpoſition to receive them?—Towards the cloſe of the day they were.

Was your ſhip in a condition to have renewed the engagement, if you had got along-ſide of an enemy?—She was ready for action thirty or forty minutes after.

Did you ſee the Vice-Admiral of the Red bear down into the Admiral's wake that afternoon?—I ſaw the Vice-Admiral of the Red bear away to a poſition a-head.

Do you know if he was ordered to take the ſtation of the Vice-Admiral of the Blue?—No.

Was not the Vice-Admiral of the Blue the laſt that came out of the engagement?—I believe ſo.

Were not the ſhips of that diviſion thoſe that you ſpeak of as diſabled in their ſails and rigging?—Some of that diviſion, and ſome of the others.

Can you ſpeak with certainty that ſome of them were of the other diviſions?—Not with certainty, but I preſume ſo, as many of them were on my lee-bow.

Did you diſcern what ſail the Victory carried when ſhe ſtood to the ſouthward?—I think, when ſhe firſt ſtood to the ſouthward, ſhe had her fore-ſail and top-ſails, and ſoon afterwards her top-ſails only.

What part of the French fleet were in ſight the next morning?—Three ſail of ſhips were about two miles a-ſtern of the Defiance, but the body of the French fleet was not ſeen by the Defiance.

Did you take thoſe three ſhips to be line of battle ſhips?—The neareſt I took to be a line of battle ſhip, the others were ſmaller.

Were they chaced by the Britiſh fleet?—I believe they were.

By what ſhips?—I cannot ſay by what ſhips.

Did

Did they ſet all their ſails ?——That I cannot ſay.

Was there any ſignal made for leaving off chace ?—I do not recollect.

Did they appear to you to be nearer to any other part of the Engliſh fleet ?—They muſt be ſomewhat nearer to the ſhips that were aſtern of the line.

Among thoſe ſhips that you ſay were diſabled after the engagement, were any of them of the Red diviſion ?—I do not recollect.

Suppoſe that there were ten or twelve diſabled ſhips, were there not eighteen or twenty that were not ſo ?—The ſhips that were diſabled in their ſails and rigging, drew moſt of my attention, but there might be eighteen or twenty not diſabled.

Were the frigates diſabled ?——I do not remember to have ſeen a frigate from the time I engaged, nor during the whole of the afternoon.

Admiral Montague. You have heard the charges againſt Admiral Keppel read. By the firſt he is charged with negligently performing the duty impoſed on him. By the third, with not doing all in his power to burn, ſink, and deſtroy the French fleet. By the fourth, with putting his fleet in a diſgraceful poſture, which carried the appearance of flight, and gave the French an opportunity of purſuing the Engliſh fleet, and a pretence for ſaying the Britiſh fleet run away. And by the fifth with tarniſhing the honour of the Britiſh flag. Now, Sir, you will acquaint the Court of the different inſtances in which Admiral Keppel was guilty of theſe charges, either on the 27th or 28th of July; and remember, I do not aſk your opinion but from your knowledge ?——Sir, no man can have more reſpect or eſteem for Admiral Keppel than I have; and I think him a valuable character both as an officer and a gentleman; but I muſt decline anſwering a queſtion that calls for my opinion on the evidence I have given; it would I think render my evidence nugatory, and appear an aſſumption on the Court, who are alone to judge of the charges by the evidence adduced.

I do not aſk for your opinion or your judgment, I am one of thoſe who are to judge, acquit, or condemn on the charges, and I aſk only for information to enable me to do ſo. A charge is ſent to us, and evidence is adduced, with which I am to judge, and I think I have aſked a fair and direct queſtion, equitable both to my country and the priſoner; to my country, ſince if Admiral Keppel has been guilty of theſe charges, I wiſh that his guilt may be publiſhed to the Court. To the priſoner, ſince if he is innocent, I wiſh his innocence may be publiſhed; and I aſk you to declare what you know of either, from what you ſaw of his conduct on thoſe days ?——As a witneſs, I have further objection to anſwering a queſtion that gives an opinion as my own experience; it would be eſtabliſhing a precedent which might in future affect perhaps myſelf, or thoſe I love, in character, reputation, or life. On accuſations of malignity it might in future be made a precedent, and the opinions of witneſſes might be brought in ſupport of the charge.

If

If every witneſs objects to anſwering the queſtions that are put to him, the Court cannot be competent to a judgment on the charge?—If theſe queſtions of opinion had been aſked before I gave my relation of facts, I ſhould have had no objection to anſwering them.

I do not conceive that you are to direct the Court when to make their queſtions.——But I have done.

Croſs-Examination by Admiral Keppel.

Where was the Defiance on the morning of the 27th?—On the lee-quarter of the Formidable.

Did you ſee the ſignal for any ſhips to chace to windward?—I did not ſee it, but was informed of it ſoon after.

What ſail was you under at that time?——Fore-ſail and double reefed top-ſails.

Did you make more ſail on the ſignal being made to chace?—No.

You ſaid you came to action cloſe a-ſtern of the Prince George. Were not ſeveral ſhips engaged a-head of the Prince George?—The enemy had fired about 15 rounds at the Defiance before ſhe returned the fire, and when ſhe came to cloſe action and had fired five or ſix broadſides, I perceived the Prince George and drew very ſoon afterwards cloſe up with her.

At this time did the Sandwich or any other ſhip draw up a-ſtern of the Defiance?—I did not ſee any ſhip a-ſtern for ſome diſtance.

You ſay you received the fire of ſeveral ſhips of the French line before you begun action. With what ſhip a-head or a-ſtern of the French Admiral did you begin action?—The ſecond ſhip a-head.

How many ſhips were there a-ſtern of the French Admiral in the 100 gun ſhip?—I really do not recollect, nor could I count them the ſmoke was ſo great.

Were there eight or nine?—There might be that number.

Were the French flag-ſhips together?——Two I think were very near together.

Was the French Admiral in the centre of his fleet?—I think he was.

Did you ſee the ſignal for the line of battle flying on board the Victory, when ſhe ſtood on the larboard tack towards the enemy?—I did.

How many ſhips did you ſee formed in a line with her, a-head or a-ſtern, while ſhe continued on that tack?——To the beſt of my judgment there were not many.

Were there any?—There were.

Can you name them?—If I miſtake not, the Foudroyant; the Prince George might be another.

Had you repaired your own damages, ſo as to be able to get into the line yourſelf at that time?—I had then wore, and was ſtanding on after Sir Robert Harland.

Was

Was you able to get a-head of the Victory while ſtanding on that tack, with the ſignal for the line flying?—We had wore with our rigging ſtill in a diſordered ſtate, except what contributed to wear; and bringing on canvas as faſt as poſſible. We were much to windward of the Victory, which was on our lee-beam.

Was you able to take your ſtation, which was a-head of the Victory. Were your damages ſo repaired as to enable you to take your ſtation while ſhe was on that tack?—Had the ſignal for the line of battle been out when the Defiance wore, ſhe could have done it; but the Defiance ſtood after Sir Robert Harland, and was very much to windward.

What time did you rejoin the diviſion of the Vice-Admiral of the Blue in the afternoon?——I edged down to him when the Red diviſion bore away, and ſtretched to get a-head of the centre.

How was the Vice-Admiral of the Blue ſituated with reſpect to the Victory, when the Red diviſion paſſed a-head?—To the beſt of my judgment, the Red diviſion paſſed between the centre and the Vice of the Blue; and I think the Victory had her head to the ſouthward at no great diſtance.

Preſident. Did you, on the 27th of July, ſee any part of the Britiſh fleet run away from the French fleet, or ſee any appearance that could be ſo conſtrued?—No.

Did you ſee on any part of that day the French fleet run away from the Britiſh fleet, or ſhew any appearance that could be ſo conſtrued?—On the 28th, they avoided and fled from the Britiſh fleet.

Admiral Montague. The evidence that Capt. Goodall has given, has pleaſed me more than that of any witneſs that has preceded him; but as he refuſed to anſwer a queſtion which I put to him, becauſe it was giving, as he ſays, an opinion, I beg the letter to Sir Thomas Pye may be read, that the Court and the witneſs may ſee that I have a right to enquire into every thing that relates to the charge, and aſk the opinion of witneſſes, ſince in the proſecution, the greateſt part of the evidence is matter of opinion. The letter of the Admiralty to Sir Thomas Pye was then read; wherein, among other directions, the Court "are to enquire into all that is contained in the charges."

Withdrew.

LIEUT. WALLER, of the Formidable, was then called.

Sir Hugh Palliſer. At what diſtance do you judge the Victory and the body of the fleet were from the rear of the enemy, when the Formidable paſſed the laſt of the French ſhips, and ceaſed firing?—I do not recollect to have ſeen the Victory when we came out of action.

Did not the Formidable, at the time of paſſing the rear of the enemy, wear and lay her head to the enemy again?—Yes.

What time did you firſt take notice of the Admiral and the reſt of the fleet?—I did not ſee him till we wore a ſecond time, but the time of the day I cannot ſpeak to.

What diſtance was the French fleet from the Victory then?—A mile or a mile and a half.

[The Vice-Admiral now aſked a variety of queſtions, not tending to eſtabliſh any point of the accuſation, but to prove, as far as he was able, that he himſelf did all he could with a diſabled ſhip to get into his ſtation, and that he was willing to fight, although he was not able to ſtand. The queſtions were exactly the ſame as thoſe put to Captain Kineer, to which we beg leave to refer.—They contain, in a few words, a narrative of the pains taken on board the Formidable, in knotting and ſplicing the rigging, to prepare her to follow the Admiral; the diſabled ſituation in which ſhe was found to be after the engagement, and the perfect incapacity ſhe was in of keeping her ſtation in the line of battle a cable's length aſunder.] The evidence was concluded in the following manner:

Admiral Montague. Being quartered upon the lower deck, I beg leave to know how long it was before you came upon the forecaſtle after the engagement, to ſee the condition of the ſails and rigging?—I did not ſee them all.

Then you have not been ſpeaking all this time from your own knowledge, but from hearſay?—Only from hearſay, it was the general opinion, and I have been giving mine.

Croſs-Examination by Mr. Keppel.

When ſtanding to the French, did you ſee the repeating frigate?—I did not attend to it.

Did you in the afternoon at any one time ſee the Victory by compaſs?—No.

Did you at any one time in the afternoon obſerve the ſignal for the line of battle, with the Blue flag at the mizen, on board of the Victory when her head was to the ſouthward?—I did not attend to any ſignals on board the Victory.

Then I am to underſtand your whole attention was taken up in knotting and ſplicing the rigging?——That engroſſed the greateſt part of my attention.

Was you aſſiſted by the men, properly and like good ſeamen, all that time?—I think I was.

Had they any wine or grog given them to chear them up?—Not to my knowledge.

What time was the fore-top-ſail unbent on board the Formidable?—I cannot charge my memory with the time.

Can you ſay within half an hour, an hour, an hour and an half, or two hours?—I cannot pretend to ſay what time.

Ordered to withdraw.

LIEUTENANT HILLS, of the Formidable, was then called and underwent the ſame examination as the former witneſs, and declared as well as him, after having anſwered every queſtion of the proſecutor in the affirmative, reſpecting the diſtance, the ſituation, and the courſe of the Victory, that he neither ſet her to compaſs, obſerved her

her ſituation, ſaw her ſignals, or any thing elſe reſpecting her. He ſaid, when Sir Hugh aſked him, that the Formidable made ſail after the Victory; but on the croſs-examination he ſaid, he did not ſee her fore-top-ſail up till eight o'clock, and that ſhe was not able to hold her ſtation in a line of battle.

CAPTAIN SIR JOHN LOCKHART ROSS, of the *Shrewſbury*, was then called and ſworn.

Sir Hugh Palliſer. Do you remember the time you ſaw the French fleet firſt on the morning of the 27th?——At four o'clock, ſtanding to the N. W.

How long did they continue upon that tack?—They began to wear about eight o'clock.

Did the van or rear wear firſt?—The van.

Succeſſively in each other's wake?——They did.

How long did they continue on that tack after they had all wore?—At half paſt nine I loſt ſight of them, being ſqually and thick to S. W.

When they had wore, as you have deſcribed, did they appear in line of battle?——Yes.

What diſtance were they between you and the van of our fleet at eight o'clock?—I cannot ſay; at four their center ſeemed about eight or nine miles to windward of me.

When did they change their tack again?—At ten; when it cleared I ſaw them to the N. W.

Then they wore again to come to the N. W. with their larboard tacks?—They did.

Were they then in a line?——More irregular than I had ſeen them the preceding days.

When the French began the attack, did they edge down upon that part of the fleet where you was, and begin to fire upon you?——I cannot ſay, I was too attentive to my own ſhip.

After wearing a ſecond time, did they attack the Britiſh fleet?—They fired two ſhots before their colours were hoiſted.

Do you conſider their wearing twice, when they might have tacked, as indicating an evaſion, or courting an action?—When I left ſight of them in the ſquall, I told my officers, that if the ſquall continued, we ſhould ſee them to lee-ward, as I judged, from their former conduct, they meant to puſh for Breſt; when I ſaw them, there were ſix of them before the wind at once. I ordered the ſtudding-ſail booms to be rigged out, and to bear away two points.

As they hauled their wind to the N. W. had you kept your ſhip as ſhe was, could you have fetched their van?—I never bore away.

Was your ſhip then conſiderably to windward of the reſt of the diviſion?—A-head, whether to windward I cannot ſay.

Did you chace by ſignal that morning?—At a quarter paſt five

my ſignal was made to chace, we being the weathermoſt ſhip of the fleet at that time.

When the French got on the larboard tack, and fired upon you, did you think they then kept their wind?—They ſeemed to me to be upon a wind.

Did they ſeem ſo after they had paſſed you, whilſt the French and Britiſh fleets were paſſing each other, or did the French ſeem to edge away?—The ſmoke prevented my making any correct obſervation, and my other engagements with my own ſhip prevented alſo my obſerving them.

After the Red diviſion paſſed the rear of the enemy, did not you in the Shrewſbury wear and ſtand towards them again before any other diviſion?——I did.

Did you then ſay you intended to attack the rearmoſt of the enemy, as ſoon as you could get up to her?—I do not recollect; I ſaw it would confuſe us, and therefore wore again immediately almoſt.

Why did you firſt wear?—As there was no ſignal for line of battle, I ſat out with intention to purſue the French; but ſeeing the effects were likely to be bad, wore again directly.

Did you notice the Formidable laying her head to the enemy again after ſhe came out of action?—I did not. At half paſt twelve the Vice of the Red made ſignal to tack; we then tacked after the French, and that engroſſed my attention.

When the laſt of our ſhips came out of action, how was the Vice of the Red and his diviſion ſituated in reſpect to the rear of the enemy?—When the Red ſquadron tacked and ſtood to the N. the ſternmoſt of the French fleet were then a-head, and on our lee-bow; we were cloſe to the wind.

After your diviſion tacked, did you not make ſail, and draw up with the rear of the enemy?—I don't recollect.

Did the Red tack before the center diviſion wore?—They did.

As you tacked before they wore, I ſuppoſe you were conſiderably nearer the enemy than the center diviſion?—We were nearer, how much I can't ſay.

Can you ſay how far the Admiral and his diviſion were from the enemy when they wore?—I can't really ſay.

SEVENTEENTH DAY, TUESDAY, *January* 26.

Continuation of the Evidence of Sir John Lockhart Roſs.

Queſtioned by Sir Hugh Palliſer.

WHAT diſtance did the Red diviſion ſtand from the enemy before they tacked?—I cannot ſay.

Who firſt made the ſignal for battle, the Vice-Admiral of the Red, or the Commander in Chief?—At two P. M. the ſignal to engage was

was made, but I did not ſee the ſignal until I paſſed the line of fire of the enemy.

Has an officer commanding a diviſion a right to make any ſignal to contradict the orders of a Commander in Chief, ſuch as calling ſhips from chace, and ſo forth ?—I think not.

If the Admiral, while he was ſtanding towards the enemy, had continued the ſignal out, would not the Red diviſion, from the ſituation they were in, have bore down and attacked the enemy ?——As they were to windward, they certainly could have edged down ; but the point is, how proper it would have been from the ſituation the fleet was then in.

Was any part of the Red diviſion diſmaſted ?—Not that I know of.

Was any part of the Red diviſion otherwiſe diſabled, to your knowledge ?—The Shrewſbury was, but I cannot be a judge of what damages the others received.

Do you mean that the Shrewſbury was not fit to go into action again immediately ?—In half an hour ſhe was fit to renew the action.

I ſhould be glad to know what were the particular damages of the Shrewſbury ?—The main & fore ſpring-ſtays, main-tops, top-ſail tyes, great part of the running-rigging, and moſt of the ſails ſhot through, one ſhot through the main-maſt, one ſhot through the rudder-head, one ſhot through the main piece of the rudder, and ſeveral others.

From the very briſk fire kept up by the Britiſh fleet, have you not reaſon to believe the French ſuffered in proportion to ours ?—I ſhould imagine ſo.

Admiral Arbuthnot. Did the enemy appear to be as much damaged in their ſails and rigging as our ſhips ?—I thought not.

Did you obſerve the enemy when they began to form the line with their heads to the ſouthward towards the Britiſh fleet ?—I did not obſerve them. The French fleet wore ſome time about half after three, with their heads to the ſouthward.

If the whole of the Britiſh fleet had immediately wore after paſſing the rear of the enemy's line, inſtead of ſtanding to a diſtance, might not the engagement have been immediately renewed, and the enemy prevented from forming a new line, without having any regard to the condition of the fleet ?—This is no queſtion. I am called here to anſwer queſtions, but this is merely a matter of opinion. I think it muſt depend much on the condition of the ſhips.

Preſident. Sir John, I beg leave to tell you that you may give opinion or not, as you pleaſe, that indulgence is granted by the Court.

Admiral Arbuthnot. I think, Sir John, you ſaid yeſterday you wore and ſtood to the French fleet, in order to renew the action immediately after you had paſſed the rear of the enemy, but you almoſt inſtantly judged it proper to wear back again, becauſe you ſaw it would have thrown the fleet into confuſion ?—I did.

Admiral Montague. As moſt of the queſtions that are aſked here are ſuppoſitions and opinions, I beg to aſk your opinion if the Bri-

tiſh fleet, after having come out of the action, had received little or no damage, whether or not the Commander, Admiral Keppel, would not have immediately renewed the action?——Moſt certainly he would.

Sir Hugh Palliſer. When Sir John ſays that the ſhips would have been thrown into confuſion by the wear of the Shrewſbury, does he mean he would have thrown the ſhips of his own diviſion into confuſion?—No; I mean, that if the ſhips which had come out of action had wore and doubled upon the enemy, they would have thrown themſelves, and thoſe coming up out of the action, into the utmoſt confuſion.

When ſhips in the van tack before ſhips that are aſtern of them, do not the leading ſhips weather thoſe who are a-ſtern of them?—— They generally do; but the caſe before us is a particular exception to the general rule. Two or three things muſt be conſidered. The leading ſhips could not take the wind while the French fleet were a-ſtern, and part of the Engliſh ſhips alſo, without throwing the whole into the utmoſt confuſion, and firing through one another.

Admiral Montague. Suppoſing our van had wore immediately and miſſed ſtays, would not they have put the fleet into the greateſt confuſion?—They certainly would.

Admiral Montague. I aſk you this merely for your opinion, Sir John, for the preſent proſecution is merely like an examination for a Lieutenant.

Sir Hugh Palliſer. Did the Red diviſion bear down into the Admiral's wake that afternoon, when the ſignal for the line of battle was flying, and the fleet on the ſtarboard tack?—At twenty minutes paſt three the Admiral made a ſignal to wear; at half paſt three the Admiral made a ſignal to bear down into his wake, the French having, a few minutes before that, wore with their heads to the ſouthward, forming a line of battle. The Admiral made the ſignal for forming the line of battle a-head a cable's length aſunder, which was obeyed by the Red diviſion.

Did not the Red diviſion firſt go down a-ſtern of the Admiral?—The Vice-Admiral of the Red led the fleet upon that tack, and which I heard afterwards was in conſequence of orders from the Admiral.

[Admiral Keppel here ſaid, that though Sir John had not ſaid that he knew this circumſtance from his own knowledge, he would himſelf bring proof of it.]

During the night of the 27th, were any obſervations made in the Shrewſbury upon the French fleet?—During the whole night we were under very eaſy ſail, in a line of battle a cable's length a-ſtern of Sir Robert Harland, the French fleet being to leeward of us.

Did you obſerve the French make any ſignals during that night? I obſerved none myſelf, but was told about eleven o'clock that there were ſome rockets thrown, though I was on deck the whole night.

Was it obſerved on board the Shrewſbury when they bore away?—No.

Do you remember when you loſt ſight of them in the night?—I do not.

How many of them were in ſight next morning?—At four o'clock I ſaw three ſail of them five or ſix miles to leeward, ſtanding to the S. E. bearing away with all the ſails they could croud.

Were no more o the fleet ſeen?—At five o'clock one of the Lieutenants at the main-maſt-head ſaw nine or ten ſail, ſix or ſeven leagues to the S. E.

Was any ſignal made to the Admiral by your ſhip of ſeeing theſe ſhips?—The Shrewſbury made none, becauſe I ſaw the Admiral had made ſignal for ſeveral ſhips to chace them.

Did any other of the Red diviſion make that ſignal?—I did not obſerve any, but part of the diviſion and the Admiral had ſet their top-gallant-ſails and bore away.

Admiral Montague. Did you ſee the Britiſh fleet run away, or ſhew any appearance of flight, or did you ſee any other circumſtance that could give the French a pretence of claiming the victory; or that they purſued the Britiſh fleet and offered it battle?—Moſt aſſuredly at no period of time did the Britiſh fleet have the leaſt appearance of running away.

Then, Sir, did you ſee the honour of the Britiſh navy tarniſhed on the 27th or 28th of July?—I did not, in any reſpect.

In the morning of the 28th, when you found the French fleet were gone, did you not look upon it they ran away from the Britiſh fleet?—Certainly, I did.

Croſs-Examination by Admiral Keppel.

Admiral Keppel. Could the ſhips on coming out of action, in the cloſe order they were in, tack clear of each other till they ſtood on to increaſe their diſtance?—*It was abſolutely neceſſary to ſtand on and increaſe the diſtance.*

Was it by means of the Red diviſion having ſtood on that they were able to ſtand to windward of the French fleet?—Moſt certainly it was.

I beg to aſk Sir John Roſs, if I uſed every means as an officer to come up with the French fleet from the 24th to the 27th of July?—You did, by carrying proper ſail by night and day.

If I had purſued the French in a line of battle, would it have been poſſible to have preſerved our nearneſs to them?——It would not.

Was it not in their power, every day from the 23d, to have brought on an action with the Britiſh fleet?——Certainly, they being always to windward.

If I had formed a line of buttle in the morning of the 27th, could I have brought the French to action that day?——No, becauſe if you had formed the line, and the weathermoſt ſhips had bore down into the wake of thoſe to leeward, you would have been five leagues to leeward of the French fleet.

At eleven o'clock, when the French were ſo near to us, and when the wind changed favourable to the Engliſh, muſt not the French Admiral have given up ſome of his rearmoſt ſhips, if he had not riſked battle with his center?—Moſt certainly.

Did it ever appear to you, Sir John Roſs, that I had given over intentions of renewing the fight, if I could have formed a line in time to have done it?—*Certainly it appeared at no time; for the ſignal for the line of battle was out all the afternoon, and all night.*

Sir John is an officer of long experience in the ſervice, I therefore call upon him to inform the Court of any inſtance, if he knows of any, wherein I negligently performed my duty on the 27th or 28th of July?—*I know of none; in every reſpect the Admiral diſcharged his duty, as far as I know, becoming a brave and gallant officer.*

Withdrew.

CAPTAIN PEYTON, of the *Cumberland*, was then called on the part of the proſecution.

Sir Hugh Palliſer. When you firſt ſaw the French fleet, how were they ſtanding?—They were then ſtanding on the larboard tack, with their heads to the northward.

When did they take the other tack?—About eight o'clock they wore, and formed their line on the ſtarboard tack.

After they had all wore, did they appear to be in a line?—Yes, as far as I could judge of them at that diſtance.

How long did they continue upon that tack?——Till about ten o'clock.

What did they do then?—They laid their heads to the northward again.

Did they tack or wear at that time?—There was a thick ſquall at the time, and I did not ſee them as I recollect.

Preſident. Did you loſe ſight of them any time from your ſeeing them on the ſtarboard, till they came to the larboard tack?—The ſquall was ſuch that at times ſome of their ſhips were ſeen; they were not wholly covered.

Sir Hugh Palliſer. When you ſaw them again on the larboard tack, did their van appear to you to keep their wind cloſe, or to edge down to attack the Britiſh ſhips?—They appeared to me to keep their wind, and their headmoſt ſhips to croud all the ſail they could.

By their being to windward firſt, and wearing and leaving large afterwards, when they might have tacked and kept their wind, and afterwards attacking the Engliſh, do you conſider thoſe motions as an indication of their intending to avoid coming to an engagement, or otherwiſe?—At the time they wore, I thought their intentions were different from what they had been for ſeveral days before, when we had been purſuing them; but when they tacked again and kept their wind, crouding all their ſail, I then thought it was their intention to avoid coming to an engagement; and, as I obſerved before, they out-ſailed us as a fleet in a body, it was a confirmation to

me

me that they thought of getting away, which they believed they could do when they pleaſed.

Did they continue to croud ſail, or did they ſhorten ſail, and bring down their top-ſails?—It was not the foremoſt ſhips that bore down, but the fifth or ſixth ſhip, who began firing on the Monarch, as appeared to me, and from thence began the action.

Then they edged down, and attacked us by firing on the Monarch?——Yes.

Did they continue to range along the Engliſh line with a croud of ſail, or did they ſhorten ſail?——After the firing began, which was very unexpected to me, from what I ſaw of their ſhips, ſome of them brought-to to fight, and others continued under ſail, but with no appearance of crouding ſail after the engagement began.

Was the ſignal for engaging made firſt on board the Queen or the Victory?—I do not know.

While the Red diviſion was engaged, were you a-head or a-ſtern of the Queen?—I was on her weather-bow.

Was you obſtructed in your fire by any ſhips coming in the way?—The Monarch was before the Cumberland's weather-beam, but the enemy came under her ſtern, and we fired as they preſented themſelves.

When the Red diviſion tacked, did they not tack up to windward of the rear of the enemy when they had paſſed?—They did, at leaſt part of the ſhips of the Red diviſion.

Do you know that the whole diviſion did not tack and ſtand with the Admiral?——I do not know.

Did you ſee the Admiral and the center diviſion when they paſſed the enemy's rear?——I ſaw the Victory as we paſſed her.

Did you obſerve the Admiral and the center diviſion afterwards wear?——I do not recollect in particular as to time, but I believe they wore.

As the center diviſion had wore and ſtood the ſame way as the van, was the van a-head and to windward of them?—The van for ſome time bore down, and I believe the center did ſo to.

Then at that time was your van diviſion a-head of the center, and to windward withal?—I cannot ſay.

After the van had tacked or wore, did you make ſail or ſhorten ſail, or draw up to the rear of the enemy, or how?—Upon our coming up we chaced the enemy, and paſſed them about two gun ſhot to windward; we then hauled our wind upon the ſtarboard tack.

To what diſtance did the center diviſion ſtand beyond the rear of the enemy, before they ſtood towards the enemy again?—I cannot judge of the diſtance.

To what diſtance did the van diviſion ſtand?—To my beſt recollection, about two gun ſhot from the rear van of the enemy.

Do you remember the time the ſignal for battle was hauled down?—No.

From

From the ſituation you have deſcribed the van diviſion to be in, about two gun-ſhot from the rear van of the enemy, and the center ſtanding towards the enemy, had the ſignal been continued, and the body of the fleet had advanced towards the enemy, did any reaſon appear to you for not re-attacking the enemy?

Admiral Keppel begged leave to obſerve, that theſe were not the words of Captain Peyton. He had ſaid that the van was within two gun ſhot of the enemy upon the ſtarboard tack, and the preſent queſtion ſuppoſes that he has ſaid upon the larboard tack.

It was referred to Captain Peyton to explain his former anſwer, and to anſwer the queſtion now put.

He begged to decline anſwering the queſtion, ſince it was matter of opinion, and opinion was liable to error.

Did you obſerve the French fleet when they broke up their line of battle?——No.

[Here the Preſident informed the Court, that he had received a note from Sir John Roſs, requeſting leave to explain himſelf in a part of his former evidence. The Court agreed to the propriety of the requeſt, and Captain Peyton was intreated to withdraw for a few minutes. Sir John came up, and informed the Court, that his anſwer to a queſtion of Admiral Keppel's, where it was ſtated, that the ſignal for the line of battle was out all night on board the Shrewſbury, he begged it might be altered, and ſaid that the Shrewſbury kept her ſtation all night. Admiral Montague aſked him if his colours were flying all night, and he anſwered they were.]

Captain Peyton then returned to the bar.

Sir Hugh Palliſer. Did you ſee the French that afternoon form their line on the ſtarboard tack?—Yes.

Have you not reaſon to believe, that the French fleet ſuffered as much as ours?—They did not appear to have ſuffered ſo much as ours, except one ſhip, which appeared more diſabled than any of ours.

Did you obſerve any ſhips diſmaſted on either ſide?——No.

Did you obſerve any ſhip in the Red diviſion diſabled at that time? The Monarch had her fore-top-maſt-yard carried away.

Did you ſee the Admiral when he laid his head to the ſouthward again?—I do not remember it at preſent.

When did you firſt take notice of his being in that ſituation?—It ſtrikes me that I ſaw him firſt when we were ordered to make ſail a-head of him.

You have ſaid that you obſerved the French to have formed a new line with their heads to the ſouthward, was not that ſtanding towards the Britiſh fleet?—Yes.

By the enemy's ſtanding towards the Britiſh fleet, and forming a new line, did you think they ſhewed a diſpoſition to renew the engagement, or to avoid it?——To renew it.

If

If the Admiral with the centre, and the Vice-Admiral of the Red with his diviſion had advanced and attacked the enemy, would it not have prevented the enemy forming a new line?—That is a matter of opinion, and I decline anſwering all matters of opinion.

Did the Red diviſion bear down into the Admiral's wake that afternoon?—The Red diviſion bore down by ſignal, paſſed the Admiral, and took their ſtation a-head of him on the ſtarboard tack.

Do you remember any notice being taken of the French fleet that night?—Their lights were ſeen, and they fired ſome rockets at eleven o'clock.

Did you perceive them bear away in the night?—No.

How many were in ſight in the morning from the Cumberland?—Three.

Do you remember any ſignal being made of any more being ſeen?—I believe the Monarch and the Queen made a ſignal for ſeeing a fleet, but I do not know what particular ſignal it was poſitively.

Sir Hugh Palliſer. Were thoſe three ſhips chaced?—Yes, ſome little time, I cannot ſay how long.

What ſort of wind and weather?——Moderate, and I think the wind to the N. of the W.

With little wind, and moderate weather, do you conſider Uſhant as a lee-ſhore, dangerous to approach, being ſummer time, and ſhort nights?—The queſtion anſwers itſelf. In moderate weather there can be no danger.

Admiral Montague. I do not aſk this as a matter of opinion, as you ſay you will not anſwer in matters of opinion; but I aſk you whether you ſaw the Britiſh fleet run away from the French fleet, or have the appearance of flight? Or did you ſee the French offer it battle, ſo as to give the French a pretence to claim the Victory?—Here are too many queſtions in one.

Did you ſee the Britiſh fleet run away?—No.

Sir Hugh Palliſer. They are not words of the charge.

Admiral Montague. I think the charge ſays, "the French ſaid the Engliſh run away."

Admiral Keppel. The proſecutor has fifty times aſked whether the Victory did not *ſtand away with much ſail*, that is, tantamount, the ſame thing.

Admiral Montague. Did you ſee the Britiſh fleet have the appearance of a flight?—No.

Did you ſee the French Admiral purſue the Britiſh fleet, and offer it battle?—The French Admiral did follow it, and offer battle.

Did you ſee the honour of the Britiſh navy tarniſhed on the 27th or 28th of July?—No, by no means in the world.

As you ſaw the French offer us battle, did you ſee the French fleet on the morning of the 28th, or were they not run away?—I did not ſee them, they were run away.

Admiral Roddam. As you ſay they offered us battle when they formed upon the ſtarboard tack, if they had intended that, would they not have fetched within piſtol ſhot of the Britiſh fleet?—I cannot ſay how near they would fetch, I wiſh to explain what I mean by offering battle, they ranged to leeward of the Britiſh fleet, at ſuch a diſtance together, as to give the Britiſh an opportunity of attacking, if they thought proper.

Pleaſe to give ſome account of the damages of your ſhip?—One ſhot through the bow-ſprit, the rigging and ſails were terribly cut.

Croſs-Examination by Admiral Keppel.

I would aſk you whether, at the time you have deſcribed the French fleet to have offered the Engliſh battle, the Engliſh Admiral had been able to form his line of battle?——The line was not formed till late in the afternoon.

Had not the ſignal been flying the whole afternoon for the line?—Yes, from two o'clock.

Did it ever appear to you that I had given over my intentions of renewing the battle, if I could have formed my line in time to have done it?—I could not judge of the Admiral's intentions; but from the diſpoſitions and the movements of the fleet it appeared he endeavoured to form the line as well as the diſabled ſhips would permit.

I aſk you whether I uſed every means, as an officer, to come up with and engage the French, from the 24th to the 27th of July?—If the Admiral means that I ſaw he did not uſe every endeavour, I anſwer, *No*; but I cannot anſwer for what I did not ſee.

Was it not in the power of the French every one of the preceding days, to have brought on an action with the Britiſh fleet?——After the 23d, they certainly could have choſe their time, as they were to windward.

After they had wore and formed their line on the ſtarboard tack between eight and nine in the morning of the 27th, did they not keep their wind, and ſtand with their uſual preſs of ſail?—After they had come to the ſtarboard tack they ſtood large.

When the Vice-Admiral of the Red tacked, after having paſſed the rear of the enemy, how many ſhips had he with him?—I believe all; the Monarch I think ſtood on, and ſhe was the moſt diſabled.

Was the Duke there?—I cannot tell, I did not ſee her.

Do you remember when you cheered the Admiral on the larboard tack?—It was between one and two o'clock.

Had the Admiral the ſignal for wearing up at that time?—I am not poſitive; I think not; but I have not any note of it in my minutes at all.

Was the fleet then ſtanding to the ſouthward, when the French were two gun ſhot off?—We were juſt going to the other tack.

Where was the Vice-Admiral of the Blue at this time, and his diviſion?——I cannot juſtly recollect where he was at this time.

When

When the French firſt formed their line of battle on the ſtarboard tack, if they had ſet good ſail, might they not preſently have come up with the Engliſh rear, and did they not come up under their top-ſails?—They undoubtedly might, by preſſing ſail, have come up with our rear, and ſome of them under ſtay-ſails.

With crippled ſhips that had been in action, is it ſafe to go down to a lee-ſhore, or an enemy's coaſt, truſting to find good weather when you got there, or rather can crippled ſhips go in with any land?—I beg leave to decline anſwering any queſtion of opinion. In this inſtance I had no idea of a lee-ſhore.

How far was you, on the 28th, from the land of Uſſiant?—I cannot tell.

If you had come up with the French, was not there danger from the crippled ſhips on a lee-ſhore?——In that weather undoubtedly there was.

During the time the French fleet offered you battle, were the Britiſh fleet in a condition and ſituation to engage them?—Many ſhips were diſperſed, and could not come into action, owing to their diſabled ſtate.

Admiral Montague. Should you have heſitated one moment to go down to engage the French as commander of a ſquadron of Britiſh ſhips, the French being then to windward, if you could have changed places with them?—If the two fleets could be brought down to engage, I ſhould have thought it my duty to give them battle.

EIGHTEENTH DAY, WEDNESDAY, *Jan.* 27.

AT ten o'clock the Court was reſumed, and CAPT. GOODALL, of the Proſerpine frigate, was called.

Sir Hugh Palliſer aſked him ſome queſtions reſpecting his being ſtationed on the 23d of July to obſerve the motions of the French fleet.

Admiral Keppel, that the Court might not be troubled with a number of queſtions foreign to the accuſation, informed the Court, that the French fleet might have gone into the port of Breſt, on the 23d of July, and this being the fact which the proſecutor meant to eſtabliſh, he proceeded in his evidence.

Did you receive any orders from the Admiral, and what were they?—To deſire Sir Robert Harland to continue on the ſame tack.

What was the next?—To form a-ſtern of the Victory; and both orders were given nearly at the ſame time, and the laſt was put in execution.

Had you any other orders from the Admiral that afternoon?—No.

What time was it that you delivered that meſſage?—About three o'clock.

Where was the Red diviſion at that time with reſpect to the enemy's fleet ?— A few of them were to windward.

What did they do in conſequence of that meſſage ?—They were bearing down when I hailed Sir Robert Harland.

And did they bear down in conſequence of that meſſage, and form? —I think they did.

Was that the ſtation of the Vice-Admiral of the Red, or of the Vice-Admiral of the Blue ?——Of the Vice of the Blue.

[Admiral Keppel begged leave to explain the orders more clearly to Captain Sutton.]

Did I not firſt give orders to you to deſire Sir Robert Harland to lead a-head on the larboard tack ?——Yes.

Was not I then on the larboard tack ?—Yes.

But before you went away, did I not change to the other tack, and in conſequence of that give you the ſecond order ?—Yes.

CONSTANTINE JOHN LORD MULGRAVE, one of the Lords of the Admiralty, and Captain of the Courageaux, was then called.

When did you firſt ſee the French fleet in the morning of the 27th of July ?—I do not recollect the time.

Which way were they ſtanding when you firſt ſaw them ?—I do not recollect, my attention was chiefly taken up with my own ſhip, and watching for the ſignals of the Admiral.

Did your Lordſhip, any time that morning before the action began, obſerve the French fleet to tack or wear ?—The weather was hazy, and the French at ſome diſtance, and therefore I cannot be ſo accurate either in point of time or certainty, as I think it neceſſary to the weight of evidence. There were other ſhips nearer than mine.

Did you think they were in a line ?——They appeared to me in a line ; but when ſhips are at ſo great a diſtance, the weather hazy, and viewing them from different points of view, it is impoſſible to ſay how far a line may be regular or no.

With what part of the French fleet did your Lordſhip engage ?— I really cannot be accurate as to the ſhip, though I can aſcertain the time. The Court will believe I had enough to do to obſerve and wait the orders of the Admiral. I was fired upon by ſeveral of their ſhips before I came to the French Admiral.

Did it appear to your Lordſhip that the French fleet edged down upon the Britiſh as they engaged ?——It did appear ſo, as I engaged cloſe upon a wind, and our broadſides along each other.

Did they edge down before the action ?—I was much more attentive to the motions of the Admiral in whoſe diviſion I was, than to the French, becauſe it was from him I was to take my conduct.

As I believe the Courageaux was engaged as cloſe, and in ſome parts cloſer, than any other ſhip of the fleet, I beg to know if the French engaged under more or leſs ſail than the Britiſh ?—I hope the Court will forgive me if I refuſe ſpeaking to any thing but matter

of

of fact. I do not wish to be led into any expression that indicates an opinion; and I very much object to give an answer to what is contained in the introductory part of the question now before the Court. The French fleet appeared to me to carry a great deal of sail, some more than others, as must always be the case in a fleet.

Did you observe any of them carry more than their top-sails and fore-sail, and some with the top-sails lowered?——I did not observe any with their top-sails lowered; but I think I saw some of them with their main-sails, and it struck me at the time that they carried a great deal of sail.

What sail did the French Admiral carry?——I do not know; at the time I saw him I had not time to make observations.

Who first made the signal for engaging?—I cannot say.

When the Victory passed the sternmost ship of the enemy's line, in what situation was you with respect to her?—I was a-head of the Admiral, but I was too much engaged to make accurate observations.

Can you speak to the time and the distance that the Admiral stood beyond the rear of the enemy before he wore?—I do not know the time the Admiral passed the rear of the enemy; by the watch with which these observations were taken, it was forty minutes past twelve when I passed the rear, and at eighteen minutes past one, the Admiral made the signal to wear. It appeared to me a very short time, for I had not in the time been able to bring my ship into a condition to wear.

Do you remember what sail the Victory had set after she passed the enemy's rear?——I do not.

You have not estimated the distance that the Victory was from the rear of the enemy when she wore?—I cannot estimate the distance any other way than by the time. At forty minutes past twelve I left the Victory in action; at eighteen minutes past one she made the signal to wear. What part of the time between these periods the Victory remained in action, I do not know.

Did you observe the motions and situation of the Red division?—About one the Queen, the Cumberland, and others, passed me on the larboard tack, at least a quarter of an hour before signal was made. The Monarch was lying disabled with her fore-top-sail-yard down to leeward of me.

Did you observe the Red division when they shortened sail?—I did not, I never took notice of them till they passed me in the evening to take their station in the line.

Did you observe when the signal for engaging was hauled down?—I did, at forty-one minutes past one.

On what tack was the Admiral when the signal for engaging was hauled down?——Upon the larboard tack.

Was it observed by you when the French fleet broke up their line, and began to stand to the southward?——I cannot answer that question: I know nothing of their breaking up the line. I did see some of their ships standing to the southward.

What

What time did you obſerve them with their heads to the ſouthward?—At 25 minutes paſt two, when I hauled my wind, and ſet my ſails on the larboard tack.

From the briſk fire that was kept up during the engagement on the part of our ſhips, do you not think the French ſuffered in proportion to ours?—I deſire not to anſwer any queſtions of conjecture or opinion.

Did you ſee any of our ſhips diſmaſted?—I ſaw the Foudroyant's mizen-top-maſt gone.

Your Lordſhip has ſtated that at 25 minutes paſt two the French fleet were ſtanding after the Engliſh fleet?—I did not ſay the French fleet ſtood after the Engliſh fleet, I ſaid I ſaw ſome of the French ſhips ſtanding to the ſouthward, and I conceived that they ſtood towards our diſabled ſhips.

What were the diſabled ſhips?—The Egmont, Ramillies, Robuſte, and Sandwich.

Then at this time the Admiral, and the Vice of the Red, were ſtanding on the larboard tack towards the enemy?—I did not ſee the Vice of the Red, the Admiral was.

Whilſt the French fleet or part of them were ſtanding to the ſouthward, and the Engliſh fleet to the north, were they ſtanding towards each other?——The Engliſh fleet was on the windward, and the French bearing towards our diſabled ſhips: I am accurate in this, becauſe I was in pain for the four diſabled ſhips, and had not the ſignal for the line been flying, I would have joined them.

From the ſituation you have deſcribed the two fleets to be in, did the Engliſh wear and ſtand the contrary way, or the French?—At ten minutes paſt two the Admiral made the ſignal to change to the ſtarboard tack.

Did the fleets form a new line of battle that afternoon?——The Admiral with the ſhips with him did, and the French alſo.

Did you take notice of the Red diviſion coming into the Admiral's wake that afternoon?—I did not.

When you did get into your ſtation, what obſervations did you make on the French fleet then?—I tacked in my ſtation at half paſt five; part of the French ſhips appeared forming their line from three cables length to half a mile aſunder. The Engliſh Admiral was forming his line within a cable's length aſunder.

At the time the Engliſh were on the larboard tack, did you ſee any of the French ſhips fire at a ſhip left a-ſtern, then, or at any part of the afternoon?—I did not.

Did you take notice what ſail the Admiral carried that afternoon? I did not.

In the night of the 27th, did you obſerve any ſignals in the French fleet?——Not ſo accurately as to make a minute of it; we ſaw ſome rockets thrown between ten and eleven.

[Admiral Arbuthnot was here overcome by the confined air of the

the court, and dropped back in his chair. After having retired for a few minutes he recovered, and the Court was reſumed.]

Did you ſee the French fleet bear away?——No.

What ſhips did you ſee next morning?—I ſaw three ſtrange ſhips, and I ſaw the ſignal made for a fleet by two of our own ſhips, the Monarch and the Queen.

Did you ſuppoſe the three ſhips to be ſhips of war or line of battle ſhips?—I formed no judgment about them. They had no colours, and as the ſhip I commanded was not in a condition to be liable for having her ſignal thrown out to chace, I cannot ſay I obſerved how far they were off, or what courſe they ſteered.

Do you recollect how the wind was that morning?—I think it was weſt, and moderate weather, rather hazy; there was a ſwell.

Can you ſpeak of the latitude of reckoning that day?—The 28th at noon, the latitude was 48, 16. Uſhant bore N. Diſtance 74 miles.

Was Uſhant at that time as the wind and weather was, a dangerous lea-ſhore?—It is matter of opinion, and depends upon pilotage, or a knowledge of the coaſt, which the court are better judges of than myſelf.

Admiral Montague. To your knowledge or obſervation, did you ſee Admiral Keppel negligently perform the duty impoſed on him, either on the 27th or 28th of July?—I have given my oath to ſpeak the truth to all facts that came within my knowledge. The opinion of an individual is liable to error, and at the ſame time ſacred. The Court are bound by an oath not to divulge the ſecrets of each other, and I hope they will extend the ſame protection to me. I might give an opinion to day, which, upon more mature deliberation, or on future information, I might alter to-morrow. I have, therefore, kept my opinion in this caſe to myſelf, and have denied it to my moſt intimate friends. The Court are to judge of my evidence, not I.

Admiral Montague. I fancy your Lordſhip miſtakes my queſtion; I aſk you no opinion, I will aſk no witneſs for his opinion, but I conceive that all witneſſes that come here are ſworn to tell the truth, the whole truth, and nothing but the truth, ſo help them God. I therefore aſk you from your particular knowledge, if you ſaw the Admiral in any one inſtance negligently perform the duty impoſed upon him?——I perfectly underſtood the queſtion if I underſtand the language. It imports me much when I anſwer upon oath, that I judge from my own underſtanding not others; negligence implies a crime. I muſt be equal in duty to the Admiral that commanded on that day, before I can judge of the criminality of his conduct. I conceive myſelf to be in a very diſagreeable ſituation, if I am forced to give my opinion at the requeſt of an individual member of the court, and I muſt beg for the ſenſe of the Court upon the occaſion. I ſhall conſider myſelf as an injured man, if the Court preſſes me to deliver my opinion, and the court muſt deliberate ſeriouſly and ſolemnly, before they enjoin me to ſay, whether I think Admiral Keppel's conduct was meritorious or not; they muſt think of the oath that they have taken, and they muſt think whether they are to be dictated

to

to by one member. I ſhall conſider myſelf, as I ſaid, an injured man, if I am forced to ſpeak; and conclude, that the Court are not trying Admiral Keppel, but me: they muſt deliberate very ſeriouſly on a point and in a trial of ſo much importance. I do this from a ſenſe of the oath I have taken. It has happened to me, in the courſe of my ſervice under that Admiral, to have diſapproved of ſteps which I have afterwards been convinced were right, and felt that I was wrong.

Admiral Montague. My Lord, the language you have held this day, when it goes abroad into the world, will no doubt appear ſtrange? —I muſt ſtop the Admiral before he proceeds any farther. If I am to be cenſured, I conceive the cenſure muſt come from the whole court, and not from an individual member of it.

Admiral Montague. My Lord, I muſt tell you, that your language is a cenſure upon this court, and of ſuch a ſort, that though I have been a ſeaman ſix and forty years, and a Captain and Admiral upwards of thirty years, in which time I have attended many Courts Martial, I never yet heard any equal to it, or any witneſs preſume ſo much; nor is there, I will be bold to ſay, a Court of Law in the kingdom where ſuch diſreſpect would have been permitted?——Sir, I have treated the Court with no diſreſpect; but I conceive it to be the uſage of the ſervice, if a witneſs is to be cenſured, that he be ſo by the whole Court, and not by an individual. I confeſs I do not underſtand this new mode.

Admiral Montague. New mode! the whole trial is a new mode, unprecedented and ſtrange to the laſt degree; but I muſt move the Court to retire on this queſtion. Such language and ſuch treatment is not to be borne.

Admiral Arbuthnot. I confeſs I totally diſapprove, and muſt condemn, the language of the witneſs; I think it exceedingly diſreſpectful; I think, at the ſame time, that every member has a right to make queſtions; but how far to make queſtions of opinion, muſt be decided by the Court.

Lord Mulgrave. I am ſorry to ſee any individual warm againſt me: I am cool: I have not wiſhed to offend, neither am I conſcious that I have offended when I begged the Court would conſider their oath, I did it out of reſpect, not with any diſreſpect.

The Court then retired, and after ſtaying out about an hour, the Preſident, upon their return, addreſſed Lord Mulgrave in the following manner: "My Lord, the Court have come to a reſolution, "which the Judge-Advocate will read to you."

Judge-Advocate. "My Lord, I am directed by the Court to obſerve to your Lordſhip, that in the courſe of the reaſons you have thought fit to uſe in your declining an anſwer to the queſtion put you by one of the members of the Court, with the approbation of the Court, you have made uſe of improper language, and that too with a warmth unbecoming the Court to receive. Your treatment of them is ſuch, as they cannot paſs over without obſerving to your Lordſhip their ſenſe of the impropriety of it; and it is their pleaſure, that I acquaint your Lordſhip of their diſapprobation of your Lordſhip's behaviour to them."

Lord Mulgrave. I am ſorry the Court has miſunderſtood me, I did not wiſh to give offence.

The Court immediately adjourned.

NINETEENTH DAY, THURSDAY, *January* 28.

THE Right Hon. LORD MULGRAVE called in. His Lordſhip gave an account of the defects of the ſhip which he commanded. [Withdrew.]

Sir Hugh Palliſer. Mr. Preſident, I ſhall beg leave to call Lord Sandwich to prove ſuch letters as his Lordſhip may have received from Admiral Keppel, relative to the engagement: I ſhould not have adopted this mode of proof, had not the Honourable Admiral firſt ſet me the precedent, by calling ſeveral letters of mine to his Lordſhip and the Admiralty Board, and if the Admiral has no objection, I ſhall call for ſeveral private letters of the Admiral's relating to the engagement.

Admiral Keppel. Mr. Preſident, ſo far from objecting to what the Vice-Admiral has propoſed, there is not, I will aſſure you, a ſingle tranſaction of my life that I do not wiſh to have made public.—Court withdrew.

On their return, the Judge-Advocate read as follows: The Court have come to the following reſolution: That this Court cannot take cognizance of any private letters as evidence.

Sir Hugh Palliſer. Mr. Preſident, I ſhall now call Lord Sandwich to exhibit thoſe letters, likewiſe ſome letters of mine; but at the ſame time I beg leave to be underſtood; I ſhall not preſs for the reading of them if the Honourable Admiral objects to it: what I mean is, to ſave his Lordſhip the trouble of attending twice.

Admiral Keppel. Mr. Preſident, if I ſhould find it neceſſary to call on the Earl of Sandwich, or any of the Admiralty, for the letters of the Vice-Admiral of the Blue, relative to the 27th or 28th of July, I will take care to give them due notice. I have no objection to letters being produced; the proſecutor has a right to produce my letters as evidence againſt me, but I ſhall object to the letters of the Vice-Admiral being read, as it belongs to me, and me alone, to make evidence of his letters, and to call or not to call for them as I chuſe.

Earl of Sandwich. It appears to me the ſame as it does to the Court, that private letters are not proper to produce as evidence, and as I can be called for no other purpoſe than producing thoſe letters, I imagine the Court have no further occaſion for my attendance. The letters I received are, in my opinion, in ſome parts improper to be read in public, not that I mean in any reſpect to the tranſactions of the 27th or 28th of July; but as they contain reaſons upon particular ſubjects, ſuch as the ſtate of the navy, and the conduct of particular officers, &c. [Withdrew.]

LORD

LORD LONGFORD, Captain of the *America*, was then called on the part of the proſecution. The evidence he gave reſpecting the firſt appearance and motions of the French fleet on the morning of the 27th, were exactly ſimilar to what has been again and again repeated by other witneſſes.

Sir Hugh Palliſer. If the ſhips of the Blue diviſion had been permitted to remain together, might they not have gone into action in a body, together with their own flag, and engaged with their own flag, as the other diviſions did?—If the wind had continued as it was when the ſignal was made to chace, and the ſignal had not been made to chace, I do not think that the Blue diviſion could have come into action at all.

Under the circumſtances you have mentioned, do you think the center diviſion would have come into action at all?——I do not know; but they certainly would have come in before the rear diviſion, becauſe they were conſiderably to windward.

As your Lordſhip has anſwered queſtions of opinion, I would aſk you, whether if the ſignal for chacing had been made for all the Blue diviſion inſtead of part, would it not have had the ſame effect?—— I think it would, if the diviſion had been all together.

How was the America ſituated with reſpect to the Victory, at the latter part of the engagement?—Very ſoon after I paſſed the rear of the enemy, I paſſed the Victory, who was ſtanding on the larboard tack towards the enemy. I did not ſee her while in action.

[The proſecutor again proceeded to aſk the witneſs the ſame queſtions as uſual, with reſpect to the wearing, tacking, and motions of the two fleets in the afternoon. His Lordſhip anſwered much in the ſame manner as every other witneſs; and the proſecutor drew the uſual queſtion of opinion from the facts adduced.]

Sir Hugh Palliſer. When the French formed a new line with their head to the ſouthward, did it ſhew an intention to avoid or to renew the engagement?—If they intended to renew the engagement, they might have fetched in their ſhot of the Britiſh fleet; they ſhewed a diſpoſition to *withſtand* an attack, but not to *engage*.

Did you obſerve the enemy fire at one of our ſhips that was left a-ſtern?—I did not ſee it.

How many of the French fleet were in ſight the next morning?— I think three ſail, but I was ſo far from them, I could not diſcover whether they were line of battle ſhips or not.

Croſs-queſtioned by Admiral Keppel.

Do you recollect when you made ſail in the morning of the 27th, what ſail the Vice-Admiral of the Blue was under?—I do not know what ſail he was under; I was under my double-reefed top-ſails and fore-ſail.

When the ſignal was made for the ſix ſhips of the Vice-Admiral of the Blue to chace, did they ſet all the ſail they could?—I did not obſerve.

I beg

I beg of you, my Lord, to ſtate to the Court any inſtance wherein I negligently performed my duty either on the 27th or 28th of July? —*I can ſtate no ſuch inſtance to the Court, for I know of none.*

Withdrew amidſt the acclamations of the audience.

ROBERT CHRISTIAN, Maſter of the *Ramillies*, was next called.

Sir Hugh Palliſer. Give an account of the latitude and bearings, and diſtances of Uſhant on the 28th of July?—Lat. 48. 20. Bearings, N. 86, diſtance 52 leagues.

Court. How comes it there are two leaves *torn out* of your log-book between the 26th and 27th of July?—There never was to my knowledge; they might have been cut out by ſome of the young gentlemen of the ſhip, but the two leaves never had any thing on them.

Admiral Montague. It may not be criminal, but it has a bad look juſt at ſo critical a period.

Sir Hugh Palliſer. How was the wind on the 28th in the morning?—On the weſtern angle.

What weather was it?——Moderate.

Then, Sir, did you conſider Uſhant a dangerous lee-ſhore with that wind and weather?—No.

Court. Would you have ventured on that ſhore with crippled ſhips?—Not too near.

Sir Hugh Palliſer. Have you been uſed to cruiſe off Breſt and Uſhant?—Yes, laſt war.

Then do you think there was imminent danger in the middle of ſummer of chacing ſhips ſomewhat within Uſhant and off Breſt harbour?——No.

How much did the wind ſhift on the morning of the 27th, between the hours of ſix and ten?——

[Admiral Keppel was going to ſtop the queſtion, but directly checked himſelf, and ſaid, Sir, I beg your pardon, which is the firſt time I ever did in my life. You have a right to aſk the queſtion.]

Witneſs. I cannot recollect; it is down in the log-book.

Admiral Keppel. I beg leave to object to a log-book, where leaves have been torn out on the day alluded to.

Sir Hugh Palliſer. The log-book of the Formidable, although leaves were torn out, was read, therefore I think no exception ought to be taken to this.

Admiral Keppel. That was read on a particular occaſion; but if the Court deſires, I have no objection. I think my trial on a ſingle point of wind is of ſo little conſequence, that if it is of any ſervice to the proſecutor, let him have it.

Sir Hugh Palliſer. I have done with the witneſs.

Admiral Keppel. Mr. Preſident, as I ſhall not condeſcend to put

the meaſure of my conduct, as Commander of a fleet, on the opinion of a maſter of a ſhip, I ſhall not ſik the witneſs any queſtions.

Withdrew.

RICHARD HAY, Maſter of the *Shrewſbury*, called in and ſworn. The log-book handed up to him.

Sir Hugh Palliſer. Do you recollect the Shrewſbury wearing before the reſt of the red diviſion, and what was the reaſon of it?——I really don't know the reaſon.

Did you take notice at that time of the ſituation of the Vice of the Blue's diviſion that remained engaged?—None but the Formidable.

What was the obſervation on her?—I ſaw nothing more than her being engaged.

What converſation paſſed on board your ſhip at that time?

Admiral Montague. As we have refuſed hearing Lord Sandwich relative to private letters, I think we cannot admit of converſation on board a ſhip as evidence.

After the Red diviſion tacked, did you obſerve under what ſails the Victory was when on the contrary tack?—I do not know.

How many points did the wind ſhift between ten o'clock that morning?—About two points and a half, or three points.

Why is part of the log-book croſſed out?—The reaſon is, that the leaf was ruled, and when I found it would not contain the tranſactions of the day, I croſſed it out, and copied it into the next page, permitting both accounts to ſtand, that the reaſon might be apparent; it is perfectly fair; I wrote it myſelf at the time.

Do you think the ſhips would have been able to have come into action that day, if the wind had not ſhifted?—They certainly could not have come into action.

Did the enemy wear or tack twice in the morning of the 27th?—They either tacked or wore twice; the laſt time they wore, but the firſt time I cannot ſpeak to.

Then, Sir, do you think if a large fleet wears twice, would not that bring them nearer to the other?——Moſt certainly.

If there had been no ſhift of wind, would not that have brought the Britiſh fleet more up?——It would.

Had they not run a good way to the leeward, before they hauled their wind on the contrary tack?—I cannot ſay what diſtance they run to, the weather was hazy; but when it cleared up, I counted ſix ſail of them before the wind, and, to the beſt of my remembrance, I mentioned in my log-book they were bearing away to Breſt.

By theſe ſhips bearing away, was not that the cauſe of our coming ſo well up with them?—It was.

He ſaid that the weather the next morning was hazy, and that in a ſingle ſhip he would not have conſidered Uſhant as a dangerous lee-ſhore, but with a fleet it was very different, eſpecially if he

had

been under the neceſſity of bearing to the ſouthward, which would have been the caſe, by running upon the ſhips to leeward next morning.

Admiral Keppel. The proſecutor has omitted aſking the witneſs for his day's work on the 28th of July, therefore I will aſk him for it. What diſtance was you from Uſhant that day?——I had not worked the 28th: on the morning of the 27th, the diſtance from Uſhant was 12 leagues.

Do you recollect about four days before the fleet came in ſight of the enemy, a ſtrong gale, that obliged the fleet to ſtand to the ſouthward, and crippled many of the ſhips, the Victory in particular?—It did blow freſh, and, to the beſt of my recollection, the Victory had her main-yard broke. [Withdrew.]

Mr. MADDISON, maſter of the *Victory*, was then called, who begged leave to inform the Court, that he had omitted to put in the wearing at three o'clock on the 27th to the ſtarboard, which he had afterwards interlined, and which he did himſelf, without any information, deſire, or communication with any perſon whatever. He ſwore, that the log-book was made up day by day by himſelf, from the board, which he alſo kept himſelf, and that it was open to inſpection, and was daily copied from by all the officers on board.

Copy from the Log-Book of the Victory, of the particular Remarks from the Beginning of the Action, to the loſing ſight of the French Fleet, July 27, 1778.

AT ten A. M. made the ſignal and tacked; a large body of the French fleet appeared in great confuſion.

At half paſt eleven, the ſhips a-head began to engage the French ſhips, having fired at the van of our fleet firſt. Ditto; made the ſignal for our fleet to engage; we were now on contrary tacks with the French, they ſtriving to fetch as far to the windward as they could, firing as they paſſed our ſhips; ſeveral of them fired at the Victory; but ſeeing we could fetch the Bretagne, we paſſed two of their ſhips; reſerved for the Admiral's ſhip.

At three quarters paſt eleven, got along-ſide of the Bretagne, and at noon engaged La Ville de Paris.

At one P. M. engaging the ſix ſail that were a-ſtern of the French Admiral.

At half paſt one made a ſignal, and wore, our ſhips greatly damaged in rigging and ſails.

At two made the ſignal for the line of battle a-head, at one cable's diſtance, and brought to, to repair the rigging.

At half paſt two one of the French ſhips, who had loſt her main-yard and mizen top-maſt, ran away to leeward, and a frigate to attend her.

At three quarters paſt two the French wore, and formed the line with their heads towards us.

At

At ſeven minutes paſt three, made the ſignal for the ſhips to windward to bear down into our wake, and that they might ſee it more diſtinctly, we hauled down the ſignal for the line of battle.

At fifty minutes paſt three, finding the ſignal for bearing down into our wake was not ſeen, we hauled down that, and made the ſignal for the line again, we now ſteering S. S. E. to join our ſhips to leeward, and form the line of battle.

At half paſt four repeated the ſignal for the ſhips to bear down into our wake.

At five made the ſignal for the ſhips to get into their ſtations in the line, and ſent the Milford to deſire Sir Robert Harland to make ſail with his diviſion, and form the line in the van, which he did.

The French line formed with 28 ſail, and two ſhips of fifty or ſixty guns. Employed in ſplicing the rigging, which is very much damaged, having loſt ſeven main ſhrouds, and the major part of the top-maſts and running rigging, with all the top-ſails, courſes, and ſtay-ſails very much damaged. At ſeven made each particular ſhip's ſignal of the Vice-Admiral of the Blue's diviſion, except the Formidable, who has not got her fore-top-ſails bent, to come into their ſtations for the line. The French line coming up, they have thrown the ſhips that received the leaſt damage into their van. The French Admiral has 14 ſail of the line a-head, and 13 a-ſtern of him, with two 50 or 54 gun ſhips, four frigates, one ſchooner, and three brigs.

At eight o'clock, three of the French ſhips nearly a-breaſt of us to the leeward, we ſtanding on under double-reefed top-ſails and fore-ſails to give Sir Hugh Palliſer and his diviſion more time to get into the line preparing to renew the engagement at day-light.

At eleven minutes paſt eleven, one of the headmoſt ſhips of the French fired two rockets, and ſoon after one falſe fire; and at twelve loſt ſight of their lights.

At four wore ſhip, and made the Prince George and Bienfaiſant ſignal to chace three ſail in the S. E. quarter, which were all we could ſee, and them we took to be French.

At nine called them in. The fleet all employed in ſplicing the rigging, and our carpenters employed in fiſhing the main and mizen-maſts that were ſhot through.

The authenticity of theſe minutes from the general and original log-book being thus particularly aſcertained, Sir Hugh Palliſer queſtioned him as follows:

Sir Hugh Palliſer. What alteration was there in the wind from ſix in the morning till ten?—One point appears on the log-book.

What was your reckoning on the 27th and 28th of July?—On the 27th, lat. 48. 31. N. Uſhant bore S. 89 deg. Eaſt 36 leagues. On the 28th, lat. 48. 7. N. Uſhant bore N. 75 deg. E. diſtance 27 leagues.

Are

Are theſe your current reckonings, or back reckonings from the land?—They are the current reckonings marked each day.

How was the wind and weather on the morning of the 28th?—The weather was ſqually, and the wind about W. and by N.

Did you conſider Uſhant as a dangerous lee-ſhore in ſummer?——With the wind and weather we then had, if we had been near it, I ſhould have conſidered it a very dangerous lee-ſhore.

In the latitude of it would you have conſidered it ſo?—Uſhant itſelf is but a ſmall ſpot, and a ſingle ſhip might clear it with the wind at W. N. W. in moderate weather.

Admiral Montague. Should you chuſe, with a flag ſhip, and a fleet of 30 ſail under your command, none of them diſabled, in the afternoon of any day, to come nearer to a lee-ſhore than five or ſix leagues?—No.

Suppoſing you to be in the Victory, and that ſhip went two knots in an hour, and another ſhip that was a-ſtern of you went three knots, do you not ſuppoſe the ſhip a-ſtern would come up with the ſhip a-head?——I do.

[It may not be unneceſſary to obſerve, that the Victory's log-book mentions her going, at the time ſhe is ſaid to have carried much ſail, at the rate of two knots an hour; the Formidable's log-book mentions, that ſhe (the Formidable) ſailed at that time three knots four fathom.]

Admiral Keppel. If the Britiſh fleet, after the 27th, had been caught as near Uſhant, in the ſame manner as they had been ſome days before, when the Victory broke her main-yard, with the wind at N. W. and ſuch a gale as it was at that time, do you not think they would have been in a very perilous ſituation?—With ſuch a gale of wind as we had then, and blowing weſterly, they would have been in great danger.

Was the Vice-Admiral of the Red on the weather-bow, after we ſtood upon the ſtarboard tack?—I do not recollect ſeeing him on the weather-bow; when I took notice of him, which was juſt before the Victory wore, he was one point abaft the beam.

Was the ſignal made at ten o'clock for the whole fleet to tack together?—It was.

Do you recollect whether, upon ſome change of wind, one, two or three points, the Vice-Admiral of the Red did not come upon the lee-bow of the Victory?——I recollect ſeeing him near two points upon the wind.

Do you recollect my obſerving to you, and others at that time, "Look, the French fleet are now in confuſion?" The Admiral altered the queſtion, and aſked the witneſs, if he obſerved whether the French ſhips on the lee-bow did not at that time, viz. at ten o'clock, appear in confuſion?—He anſwered, they did.

Mr. COOPER, Maſter of the *Duke*, was called to prove, whether that ſhip had not fired into the Foudroyant in the action. He ſaid

ſhe

ſhe did not, and he declared that Uſhant was a dangerous lee-ſhore, at a near diſtance, for a large fleet.

Admiral Keppel. Mr. Preſident, I beg leave to obſerve to the Court, that as the maſter of the Victory has mentioned the addition to the log-book in that particular place, and as that is directly one of the charges the proſecutor has againſt me, the Court will certainly ſee it cannot be thought to be alledged as a crime AGAINST HIM. I ſhall beg leave to add a few words that I forgot to mention at the time the Earl of Sandwich was here; the Vice-Admiral ſaid that he ſhould not have called for letters, had I not ſet the precedent. Now Sir, as I have not yet opened my defence, I cannot have called for letters or evidence of any ſort; the reaſon I mentioned to Lord Sandwich, when he was here, that I might probably call on him, was to produce the Vice-Admiral's letters to him, wherein his opinion of my conduct was directly oppoſite to what he has charged me with, but as the Vice-Admiral ſays himſelf, his letters contain nothing to my prejudice, it is needleſs, otherwiſe I am not afraid of any thing contained in either public or private letters.——Adjourned.

TWENTIETH DAY, FRIDAY, *January* 29.

THOMAS REID, maſter of the Queen, was called in.

Sir Hugh Palliſer. What was the ſituation of the Red diviſion with reſpect to the rear of the enemy, when the Admiral made the ſignal to wear and to ſtand to the ſouthward?—About two miles to the enemy's rear.

Do you ſpeak of the time they wore and ſtood from the enemy, or at a time earlier?—At the time the ſignal was made we might be rather neare

Was you to windward or lee-ward, or what poſition from them?—They were about a point upon our lee-bow.

Is the log-book you have delivered in the original log-book?—It is the original log-book which I kept day by day myſelf, and which was taken uniformly from the log-board.

Have there been any additions or alterations in the log-book now delivered?—None reſpecting the tranſactions of the 27th and 28th of July.

Did you never copy the day's works from the ſhip's log-book?—There is a reference, written in a different coloured ink and with a different pen, and therefore probably written at a different time: "At this time the Victory hauled down the ſignal for battle."

At what time was that note written?—It was written ſome part of the ſame day, though not at the ſame time. It was omitted in writing off the log.

I would aſk you what the reaſon is that there is no log marked from one o'clock till five in the afternoon?—The reaſon is, that the courſes

courſes we ſteered in that time were too complicated to make any diſtinct rates.

Is it uſual for ſhips to be five hours in action without giving rates and diſtances?

Admiral Montague. There is in the log-book at noon on the 27th an account, which ſays, courſes *various*. Now it ſtrikes me, and muſt every one, that it means from one to five o'clock, the courſes were various, and as ſoon as the hurry of the battle was over, the book again goes on mentioning the courſes very regularly.

Captain Duncan. Upon my honour, this is very extraordinary, and quite contrary to all rules of law and juſtice; we have been near an hour examining a matter, not to any one point of the charge, but apparently are trying the maſter, not the priſoner; the log-book in queſtion is very proper, and I don't ſee that the trial has any thing to do with the queſtions aſked.

Sir Hugh Palliſer. At what time did the Queen come out of the engagement?—About half paſt twelve o'clock.

Then is not the time the log is omitted, marking the time you came out of action?——It is, we were too buſily employed after coming out of action for ſome time, repairing and endeavouring to form a line. Our ſituations were ſo different, we could not mark any ſtraight courſe.

Are you ſure there are not any marks for thoſe hours in the original rough log-book?—There are not, I am certain.

What is the reaſon that there is a leaf, including the tranſactions of the 24th, cut out?—The book was left out, and that leaf was blotted, I therefore cut it out that the book might be fair and clean, as it was ſhewn to the Vice-Admiral every day.

How much did the wind ſhift from ſix till ten in the morning of the 27th?—Two points.

Give an account of the latitude, bearings, and diſtance of Uſhant on the 27th?—Twenty-ſeventh at noon, lat. 48 36. N. Uſhant, S. 86. E. 28 leagues diſtance. 28th, lat. 48, 8. Uſhant N. 74 E. diſtance 26 leagues.

In the morning of the 28th, what part of the French fleet was ſeen from the Queen?——Three ſail.

Were no other ſhips ſeen ſuppoſed to be the French fleet?—None that I ſaw or heard of.

Was not a ſignal made on board the Queen of ſeeing a fleet?——Not to my knowledge.

How was the wind and weather on the morning of the 28th?—Wind W. and moderate weather.

Was it ſuch that you could not chace a flying beaten enemy, on apprehenſion that Uſhant was a dangerous lee-ſhore?—Ships might chace that were not diſabled, without conſidering Uſhant as a dangerous lee-ſhore.

Were any part of the fleet diſmaſted ?—Not that I know of; many appeared very much crippled.

Was that appearance in ſails and rigging only, or did it appear in their maſts ?—It appeared by fiſhing the maſts, many of the top-ſails being in the caps.

What ſituation muſt a ſhip be in, and what weather, to make Uſhant a dangerous lee-ſhore ?—When they are prevented carrying ſail, owing to a variety of accidents, or blowing hard.—[Withdrew.]

Captain Duncan. Mr. Preſident, I muſt beg that we have no more examination of maſters as to log-books: we have been upwards of an hour trying the maſter of the Queen, and not one point to the purpoſe of the trial we ſit here for. The log-books were delivered in for our inſpection, and if the proſecutor examines more witneſſes the ſame as the laſt, I muſt beg the court to withdraw.

Admiral Keppel. I have no objection to the proſecutor looking into any log-books to find out any thing that way or any other to get at matter.

Sir Hugh Palliſer. I only wiſh to remark that the Victory's log-book marks one knot five fathom, and then for ſome hours ſays *laying to.*

Admiral Keppel. Whenever I am put to my oath, I will with pleaſure ſwear that I never ſaw or knew any thing of the Victory's log-book, directly or indirectly, from the day of action, until the ſecond time of going to ſea.

Sir Hugh Palliſer. I don't think the Admiral did.

MASTER of the AMERICA was called in.

Sir Hugh Palliſer. What alteration of wind was there between the hours of ſix and ten, on the 27th of July ?—Wind ſhifted about four points.

Does the log-book ſay ſo ?

Admiral Montague. I beg the witneſs, according to his oath, may ſpeak from his knowledge, the log-book is only to refreſh his memory.—The wind did ſhift about four points, between nine and ten o'clock.

Are the courſes in your reckoning allowed for that ſhift of wind, or from what it is in the log-book ?——The ſhift of wind is not mentioned in the log-book, the courſes are agreeable to what the log-book does mention.

How was the wind and weather on the morning of the 28th ?—Wind about weſt, and moderate weather.

Would you have adviſed not to chace a flying enemy at that time, for fear of making Uſhant a lee-ſhore ?—I ſhould not be afraid of Uſhant as a lee-ſhore until I was within three or four leagues of the land.

Under what circumſtances muſt a ſhip be to make Uſhant a lee-ſhore, and what kind of weather muſt it be ?—When a ſhip is between

Uſhant

Uſhant and the Seames, and the wind at W. N.W. or W. blowing a gale of wind, ſhe muſt be ſuppoſed to be in great danger.

Court. Then ſuppoſing a fleet of thirty ſail, and ſome of them diſabled, to be between Uſhant and the Seames, would they be in danger ſuppoſing it moderate weather?——Not if they were three or four leagues diſtant, and could carry ſail.

Sir Hugh Palliſer. If one ſhip could be ſafe while carrying ſail, would not thirty, able to carry ſail, be equally ſafe?—I think one ſhip would be able to get off the land in weather that a fleet could not.

Sir Hugh Palliſer. I have done.

Admiral Keppel. "As I am not one of the brethren of the Tri-"nity-Houſe, I ſhall not aſk the witneſs any queſtions."

The MASTER of the FOUDROYANT was called to prove the authenticity of the log-book, and read her days work of the 27th and 28th——27th, Lat. 48. 38. Uſhant bearing Eaſt half South, diſtance 27 leagues; 28th, Lat. 48. 17. diſtance 21 leagues.

He depoſed that between ten and twelve of the 27th, and not before ten, the wind ſhifted two points; that it blew a freſh gale, and was cloudy on the morning of the 28th, and that in the ſituation the Foudroyant was at that time, as a maſter and pilot, he would have objections to chacing, ſince he would have conſidered himſelf to be in danger.

The MASTER of the BERWICK called in.

Sir Hugh Palliſer. I ſhall not aſk the maſter any queſtions relative to his book; there is no occaſion for any; I only wiſh to obſerve, that the day of the 28th, is written with different ink, and in a different hand, with many additions, but as they may be all very innocent ones, and I dare ſay, fair and true obſervations, I have nothing to ſay againſt them, only to point it out that there is ſuch a circumſtance?—There is nothing put down on that day, but what I did myſelf at twelve o'clock at noon, on the ſame day.

Did not ſome of our ſhips on the 27th of July, during the engagement, fire into the Berwick?—Not that I know of.

Have you not underſtood it was ſo?—I have heard ſo by report of ſome of the ſhip's company, but not to my own knowledge.

Were there not ſome men ſaid to be killed by it?——Not to my knowledge.

Did you not receive any ſhot in the larboard ſide?—None that I ſaw.

Were you told of any?——No. [Withdrew.]

Sir Hugh Palliſer. "Mr. Preſident, As I fancy the court are "pretty near tired of the chapter of log-books and lee-ſhores, I "ſhall not trouble them any more on the ſubject; but I beg leave to "inform them, that the expreſs I ſent into Wales after Lieutenant "Parry, who has the original minute-book, have not been able to "ſucceed. However, I have advices from the Admiralty, that per-"ſons

" ſons are ſent to endeavour to meet him at the Nore, where he is ſup-
" poſed to be gone in the tender he commands; if he can be found
" before the finiſh of this trial, I ſhall beg leave to introduce him or
" any other evidence for information of the Formidable's log-book.
" As to the alterations of the log-book of the Robuſte, Capt. Hood
" on the one hand acknowledges them, and on the other, the altera-
" tions have not yet been pretended to be contrary to truth. If I
" can be of any ſervice in explaining any thing I will with pleaſure."

Preſident. We have not, Sir, expreſſed, that we are tired, we are ready to hear any evidence that you have to offer.

Sir Hugh Palliſer. I beg that the letters of Admiral Keppel to the Admiralty of the 23d and 24th of July may be read.

Admiral Keppel. As I ſhall not trouble the court with any further examination concerning the Formidable's log-book, ſo neither ſhall I object to the Vice-Admiral's witneſſes to that matter. On the affair of the Robuſte's log-book, I ſhall, in the further progreſs of this buſineſs, take the freedom to make ſome obſervations, as well as produce evidence to ſhew the danger, falſehood, and miſchief of ſuch alterations.

Sir Hugh Palliſer. As the Admiral has declared that he will ſhew the falſehood and miſchief of the alterations of the Robuſte's log-book, I think it is a juſtice due to the character of Captain Hood, that the Court will ſuffer him to appear, and juſtify himſelf from the attack made on him.

Admiral Keppel. I have no objection; let the Court uſe its pleaſure.—The Court replied, They would do every thing that juſtice required.

The two letters were read, which ſtated that the French fleet were in ſight, and appeared to be full 40 ſail, that the wind was favorable for them to attack our fleet if they thought proper, and that from the diſpoſition of them and their frigates, it was not ſafe to reinforce (Admiral Keppel) with any ſingle ſhips, as they would be in danger of being taken.

Sir Hugh Palliſer. As the evidence on my part is now concluded, I beg leave, that the Judge-Advocate may read an addreſs of mine to the Court, on the evidence that has been delivered.

Admiral Keppel. Mr. Preſident, The evidence on the part of the proſecution being cloſed, I truſt it is not preſumption in me to declare, that I do not reſiſt the deſire of the proſecutor, to addreſs the Court by a ſpeech from any apprehenſions of danger, but as I have never heard nor known any ſuch attempt in court-martials, and ſuch a precedent may be attended with bad conſequences in other caſes, I truſt that my caſe, which in many inſtances is ſufficiently new, will not be diſtinguiſhed by any ſuch innovation.

Sir Hugh Palliſer. Mr. Preſident, Conſidering myſelf not ſuffered to addreſs the Court in the concluſion of my evidence for the crown, I cannot think of waving it, but muſt take the opinion of the court.

Admiral Keppel. Mr. Preſident, I mean that the proſecutor has no right to make any ſpeech on the merits of the caſe in any part of this cauſe.

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The Court having retired a few minutes on this queſtion, returned, and the Judge-Advocate read the reſolution: "It not coming within "the knowledge of any member of this Court, that it has been the "uſage of Courts-Martial to receive any thing from the proſecutor "on the merits of his cauſe, when he has declared that he has cloſed "his evidence; therefore, it is reſolved, that the paper now offered "to the Court by the Proſecutor cannot be admitted."

Sir Hugh Palliſer. As I cannot be ſuffered to make a ſpeech now, it is very material to me to know whether, AFTER the Admiral has cloſed his evidence, I may THEN offer an Addreſs.

Court to Admiral Keppel. Are you ready, Sir, to go upon your defence directly.—*Admiral Keppel.* I beg leave to inform the Court, that I am ready to go upon my defence, and will with their permiſſion, begin it to-morrow morning.

[Here an altercation enſued, between Sir Hugh Palliſer, Admiral Keppel, and the Court, about the propriety or impropriety of ſpeeches, which was ſtopped by Admiral Montague, who roſe, and ſaid, That after the reſolve the Court had come to, he did not conceive that a ſingle word ought to be ſaid; that whenever the evidence for the priſoner was cloſed, it would then be a proper time to debate and determine whether the proſecutor might make a ſpeech upon the evidence delivered on both ſides: That when that period came he would, with pleaſure, hear both ſides, and determine upon the merits of the caſe, according to the beſt of his judgment, and the oath he had taken; he ſhould therefore move, that all the converſation that had paſſed between the proſecutor and the priſoner after the reſolution of Court, not to hear any ſpeech now, be eraſed from the minutes, which being done, the Court adjourned.

TWENTY-FIRST DAY, SATURDAY, *Jan.* 30.

AT half paſt ten o'clock the Court was reſumed, and ADMIRAL KEPPEL made the following ſpeech.

The DEFENCE of ADMIRAL KEPPEL.

"SIR,

"AFTER forty years ſpent in the ſervice of my country, little did I think of being brought to a Court-Martial to anſwer to charges of *miſconduct*, negligence in the performance of duty, and tarniſhing the honour of the Britiſh navy. Theſe charges, Sir, have been advanced by my accuſer. Whether he has ſucceeded in proving them, or not, the Court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not by a deceptious ſhew of kindneſs to lead me into the miſtake of ſuppoſing a *friend* in the man who was my *enemy* in his heart, and was ſhortly to be my *accuſer*. Yet, Sir, after all my miſconduct; after ſo much negligence in the performance of duty, and after tarniſhing

ſo

ſo deeply the honor of the Britiſh navy, my accuſer made no ſcruple to ſail a ſecond time with the man who had been the betrayer of his country! Nay, during the time we were on ſhore, he correſponded with me on terms of friendſhip, and even in his letters he approved of what had been done, of the part which he now condemns, and of the very *negligent miſconduct*, which has ſince been ſo offenſive in his eyes!

Such behaviour, Sir, on the part of my accuſer, gave me little reaſon to apprehend an accuſation from him. Nor had I any reaſon to ſuppoſe that the ſtate would criminate me. When I returned, his Majeſty received me with the greateſt applauſe. Even the *Firſt Lord of the Admiralty* gave his flattering teſtimony to the rectitude of my conduct, and ſeemed with vaſt ſincerity to applaud my zeal for the ſervice. Yet in the moment of approbation, it ſeems as if a ſcheme was concerting againſt my life; for without any previous notice, *five* articles of a charge were exhibited againſt me by Sir Hugh Palliſer, who, moſt unfortunatly for his cauſe, lay himſelf under an imputation for *diſobedience of orders* at the very time when he accuſed me of negligence! This to be ſure was a very ingenious mode of getting the ſtart of me. An accuſation, exhibited againſt a Commander in Chief, might draw off the public attention from neglect of duty in an inferior officer. I could almoſt wiſh in pity to my accuſer, that appearances were not ſo ſtrong againſt him. Before the trial commenced, I actually thought that my accuſer might have ſome tolerable reaſons for his conduct. But from the evidence, even as adduced, to account for the behaviour of the honourable gentleman in the afternoon of the 27th of July, from that evidence I ſay, Sir, I find that I was miſtaken. The trial has left my accuſer without excuſe, and he now cuts that ſort of figure, which, I truſt in God! all accuſers of innocence will ever exhibit.

I have obſerved, Sir, that the opinions of officers of different ranks have been taken. I truſt that the Court will indulge me with that liberty, in the evidence for my defence. Some have refuſed to give their opinions. I thought it ſtrange, as plain ſpeaking, and a full declaration, are the beſt of evidences in a good cauſe.

I would wiſh, Sir, the Court to conſider, that in all great naval, as well as military operations, unleſs the *deſign* be fully known, the ſeveral manœuvres may have a ſtrange appearance. *Maſters* have been called to give their opinions on the higher departments of command. Higher authorities ſhould have been taken. Such authorities are not ſcarce, for I am happy to ſay, there never was a country ſerved by naval officers of more bravery, ſkill, and gallantry, than England can boaſt at preſent. As to this Court, I entreat you, gentlemen, who compoſe it, to recollect, that you ſit here as a *Court of Honor*, as well as a *Court of Juſtice*, and I now ſtand before you, not merely to ſave my life, but for a purpoſe of infinitely greater moment—To clear my fame.

My accuſer, Sir, has been not a little miſtaken in *his* notions of the duty of a Commander in Chief, or he would never have accuſed me in the manner he has done. During action ſubordinate officers either

either are, (or the ought to be) too attentive to their own duty to obſerve the manœuvres of others. In general engagements it is ſcarcely poſſible for the ſame objects to appear in the ſame point of view to the Commanders of two different ſhips. The point of ſight may be different. Clouds of ſmoke may obſtruct the view. Hence will ariſe the difference in the opinions of officers as to this or that manœuvre, without any intentional partiality. Whether I have conceived objects in exact correſpondence with the truth; whether I have viewed them unſkilfully, (or, as my accuſer has been pleaſed to term it, *unofficer-like*) theſe are matters which remain to be determined. I can only ſay, that what Sir Hugh Palliſer has imputed to me as *negligence*, was the effect of *deliberation* and *choice*. I will add, that I was not confined in my powers when I ſailed; I had ample diſcretion to act as I thought proper for the defence of the kingdom. I manœuvred; I fought; I returned; I did my beſt. If my abilities were not equal to the taſk, I have the conſolation to think, that I did not ſolicit, nor did I bargain for the command. More than two years ago, in the month of November, 1776, I received a letter from the firſt Lord of the Marine department, wherein he obſerved: "That "owing to motions of foreign courts, it might be neceſſary to pre- "pare a fleet of obſervation." My reply to this letter was: "That "I was ready to receive any command *from his Majeſty*; and I "begged to have the honour of an audience." This requeſt was complied with. I was cloſeted, and I told the King, that "I was "willing to ſerve him as long as my health would permit." I heard no more until the month of March 1778, at which time I had two or three audiences, and I told his Majeſty, That "I had no "acquaintance with his miniſters, but I truſted to his protection and "zeal for the public good." Here were no ſiniſter views; no paltry gratifications; I had nothing, I felt nothing, but an earneſt deſire to ſerve my country. I even accepted the command in chief with reluctance. I was apprehenſive of not being ſupported at home. I foreſaw that the higher the command, the more liable I was to be ruined in my reputation. Even my misfortunes, if I had any, might be conſtrued into crimes. During forty years ſervice I have not received any particular mark of favour from the crown. I have only been honoured with the confidence of my Sovereign, in times of public danger. Neither my deficiencies, nor my miſconduct, were ever before brought forward to the public. And it is now ſomewhat ſtrange, that ſo well acquainted as my accuſer muſt have been with my *deficient* abilities, it is ſtrange, I ſay, Sir, that he ſhould be the very perſon who brought me the meſſage to take the command upon me! Nay, further, Sir. He brought me that meſſage with great ſeeming pleaſure! there was, or there was not, reaſon at that time to doubt my ability. If there was reaſon, how could my accuſer wiſh me to accept a command, for which I was diſqualified? If there was not any reaſon to doubt my profeſſional abilities ſixteen months ago, I have given no reaſon why they ſhould be ſince called in queſtion. When I returned from the expedition, I did not complain of any thing. I endeavoured to ſtop all murmurings. I even truſted the *Firſt Lord of the Admiralty* in the ſame manner as I would have done my moſt intimate friend. This might be imprudent.

dent. It might be dangerous. But, Sir, I am by nature open and unguarded, and little did I expect that traps would artfully be laid to endeavour to catch me on the authority of my own words.

It was in the month of March, 1778, that I was told a fleet lay ready for me to command. When I reached Portſmouth I ſaw but *ſix* ſhips ready, and on viewing even thoſe with a ſeaman's eye, I was not by any means pleaſed with their condition. Before I quitted Portſmouth, *four* or *five* more were ready, and I will do the perſons in office the juſtice to ſay, that *from that time* they uſed the utmoſt diligence in getting the fleet ready for ſervice. On the 30th of June I ſailed with *twenty* ſhips of the line, and very fortunately I fell in with the Belle Poule and other French frigates, and the letters and papers found on board them were of material ſervice to the ſtate. Captain Marſhall diſtinguiſhed himſelf with the greateſt honour. I confeſs that when I fell in with thoſe frigates I was at a loſs how to act. On the one hand, I conceived the incident to be favourable to my country; and on the other, I was fearful that a war with France and all its conſequences might be laid to my charge. For any thing I can tell this may yet be the caſe. It may be treaſured up to furniſh another matter for future accuſation. To this hour I have neither received *official* approbation or cenſure for my conduct. With *twenty* ſhips of the line I ſailed. *Thirty-two* ſhips of the line lay in Breſt water; beſides an incredible number of frigates. Was I to ſeek an engagement with a *ſuperior* force? I never did, nor ſhall I ever *fear* to engage a force ſuperior to the one I then commanded, or that I may hereafter command. But I well know what men and ſhip can do; and if the fleet I commanded had been deſtroyed, we muſt have left the French maſters of the ſea. To refit a fleet requires time. From the ſituation of affairs naval ſtores are not very ſoon ſupplied. Never did I experience ſo deep a melancholy as when I found myſelf forced to turn my back on France! I quitted my ſtation, and courage was never put to ſo ſevere a trial.

I was permitted to ſail a ſecond time, without receiving official praiſe or blame for the part I had acted. Theſe were diſcouraging circumſtances, but they did not diſturb my temper. My principal object was to get ready for ſea with all poſſible haſte. I was ſurpriſed on my return to be threatened with the fate of Admiral Byng, and I was ſtill more ſurpriſed to be charged with cowardice.

With thirty ſhips of the line I ſailed early in July. The French Admiral ſailed from Breſt with thirty-two ſhips. I believe that when the fleets came in ſight of each other, the French were not a little ſurpriſed to ſee me ſo ſtrong. I deſire not to throw the ſlighteſt imputation on the courage of the French Admiral. I believe him to be a brave man, and one who had ſome particular reaſons for the line of conduct he purſued. I was determined, if poſſible, to bring the French to battle, as I had every reaſon to think, that their having avoided an engagement, when it was four days in their power to attack me, was owing to their expecting ſome capital reinforcements. I therefore thought, that the ſooner I could engage them the better; eſpecially as I knew that the principal fleets of our trade were daily expected in the Channel; and if the French fleet had been permitted

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to diſperſe without an action, our Eaſt and Weſt-India fleets might have been intercepted, and the convoys might have been cut off, and the ſtake of England might have been loſt. I beg leave to mention, that in the reign of King William, the gallant Admiral Ruſſel was two months in ſight of a French fleet, and he could not poſſibly bring them to action. My being in ſight of the French fleet four days before the engagement, will not, therefore, appear quite ſo extraordinary as it has been repreſented. Had it not been for the favourable change of wind on the morning of the 27th of July, I could not have brought the French to action when I did.

I am exceedingly ſorry, Sir, that the Admiralty have refuſed me the liberty of producing my inſtructions. In all former Courts-Martial, the inſtructions and orders have been ſent with the charge to the members of the Court. As it has been denied in this inſtance, I muſt and do ſubmit.

Although on the 27th of July I fought and beat my enemy, and compelled him to take ſhelter by returning into port, yet the effort did by no means anſwer my wiſhes. I ruſhed on to re-attack the enemy. Why I did not accompliſh my deſign, will be ſeen in the evidence I ſhall produce. I might, it is true, have chaced the three ſhips which were viſible on the morning of the 28th of July, but with very little proſpect of ſucceſs. I therefore choſe to return to Plymouth with my ſhattered fleet, to get ready for ſea again, not however forgetting to leave two ſhips of the line to cruiſe for the protection of our trading fleets, which, thank God! all arrived ſafe.

On my return, Sir, I moſt cautiouſly avoided to utter a ſyllable of complaint, becauſe it might have ſuſpended our naval operations, which at that time would have been highly dangerous. I could not think of attending a Court-Martial, when greater objects were in view.

With reſpect to the ſecond edition of the Formidable's log-book, it appears to have been fabricated rather for the purpoſe of exculpating the proſecutor, than to criminate me. I ſhall therefore paſs it over, and permit the gentleman to make the moſt of ſuch an exculpation. I cannot, however, be ſo civil to the alterations and additions in the log-book of the Robuſte. Captain Hood's conduct muſt have ſtruck the Court, as I believe it did every perſon except the proſecutor, with aſtoniſhment.

A great ſtreſs, Sir, has been laid on my letter to the Admiralty. There is a paſſage in it where I ſeemed to approve the conduct of every officer in the fleet. The Court will obſerve, that I was not in my letter to inform all Europe, that a Vice-Admiral under my command had been guilty of neglect, whilſt there remained a poſſibility of excuſe for his conduct. As to Court-Martials, one very bad conſequence will, I am ſure, reſult from this trial: it will terrify a Commander in Chief from accepting a commiſſion, if he ſhould be liable to be brought to a trial by every ſubordinate officer.

As I have touched on my letters, I will juſt obſerve, Sir, that the moſt diſagreeable taſk I ever experienced, was that of writing my letter of the 30th of July. However, if I writ ill, I am confident

that I fought well, and the deſertion of the trade of France was evident from the numbers of rich captures which we made: A number far exceeding any thing ever known in ſo ſhort a period! His Majeſty noticed this in a ſpeech from the throne.

Mr. Preſident, I now deſire that the Judge Advocate may be directed to read the charges, and I will anſwer the ſeveral accuſations.

The Replies of Admiral Keppel *to the charges againſt him.*

The firſt of the charges contained in the firſt article, is,

" That on the morning of the 27th of July, 1778, having a fleet of thirty ſhips of the line under my command, and being then in the preſence of a French fleet, of the like number of ſhips of the line, I did not make the neceſſary preparations for fight."

To this I anſwer, That I have never underſtood preparations for fight to have any other meaning, in the language and underſtanding of ſeamen, than that each particular ſhip, under the direction and diſcipline of her own officers, when in purſuit of an enemy, be in every reſpect cleared, and in readineſs for action; the contrary of which no Admiral of a fleet, without a reaſonable cauſe, will preſume: and as from the morning of the 24th, when the French fleet had got to the windward, to the time of the action, the Britiſh fleet was in unremitting purſuit of them; it is ſtill more difficult to conceive that any thing more is meant by this charge, than what is immediately after conveyed in the charge that follows it, viz. " That on the ſame morning of the 27th, I did not put my fleet into line of battle, or into any order proper either for receiving or attacking an enemy of ſuch force."

By this ſecond part of the charge I feel myſelf attacked in the exerciſe of that great and broad line of diſcretion which every officer, commanding either fleets or armies, is often obliged, both in duty and conſcience, to exerciſe to the beſt of his judgment; and which, depending on circumſtances and ſituations, infinitely various, cannot be reduced to any poſitive rule of diſcipline or practice.—A diſcretion which, I ſubmit to the Court, I was peculiarly called upon by the ſtrongeſt and beſt motives to exerciſe, which I therefore did exerciſe, and which, in my public letter to the Board of Admiralty, I openly avowed to have exerciſed. I admit, that on the morning of the 27th of July, I did not put my fleet into a line of battle, becauſe I had not it in my choice to do ſo, conſiſtently with the certainty, or even the probability, of either giving, or being given battle; and becauſe, if I had ſcrupulouſly adhered to that order, in which, if the election had been mine, I ſhould have choſen to have received or attacked a willing enemy, I ſhould have had no enemy either to receive or attack.

I ſhall, therefore, in anſwer to this charge, ſubmit to the Court my reaſons for determining to bring the enemy to battle at all events; and ſhall ſhew that any other order than that in which my fleet was conducted from my firſt ſeeing them, to the moment of the action, was incompatible with ſuch determination.

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In order to this I muſt call the attention of the Court to a retroſpective view of the motions of the two fleets, from their firſt coming in ſight of each other.

On my firſt diſcovering the French fleet at one o'clock in the afternoon of the 23d of July, I made the neceſſary ſignals for forming my fleet in the order of battle, which I effected towards the evening, and brought to by ſignal, and lay till the morning, when perceiving that the French fleet had gained the wind during the night, and carried a preſs ſail to preſerve it, I diſcontinued the ſignal for the line, and made the general ſignal to chace to windward, in hopes that they would join battle with me, rather than ſuffer two of their capital ſhips to be entirely ſeparated from them, and give me a chance of cutting off a third, which had carried away her top-maſt in the night, and which, but for a ſhift of wind, I muſt have taken. In this, however, I was diſappointed, for they ſuffered two of them to go off altogether, and continued to make every uſe of the advantage of the Wind.

This aſſiduous endeavour of the French Admiral to avoid coming to action, which, from his having the wind, was always in his option, led me to believe that he expected a reinforcement. This reflection would alone have been ſufficient to determine me to urge my purſuit in as collected a body as the nature of ſuch a purſuit would admit of, without the delay of the line, and to ſeize the firſt opportunity of bringing on an engagement.

But I had other reaſons no leſs urgent.

If by obſtinately adhering to the Line of Battle, I had ſuffered, as I inevitably muſt, the French fleet to have ſeparated from me; and if, by ſuch ſeparation, the Engliſh convoys from the Eaſt and Weſt-Indies, then expected home, had been cut off, or the coaſt of England had been inſulted, what would have been my ſituation! Sheltered under the forms of diſcipline, I might, perhaps, have eſcaped puniſhment, but I could not have eſcaped cenſure. I ſhould neither have eſcaped the contempt of my fellow-citizens, nor the reproaches of my own conſcience.

Moved by theſe important conſiderations, ſupported by the Examples of Admiral Ruſſel, and other great commanders, who, in ſimilar ſituations, had ever made ſtrict orders give way to reaſonable enterprize; and particularly encouraged by the remembrance of having myſelf ſerved under that truly great officer Lord Hawke, when, rejecting all rules and forms, he graſped at Victory by an irregular attack, I determined not to loſe ſight of the French fleet, by being outſailed, from preſerving a line of battle, but to keep my fleet as well collected as I could, and near enough to aſſiſt and act with each other, in caſe a change of wind, or other favourable circumſtances, ſhould enable me to force the French fleet to action.

Such were my feelings and reflections when the day broke on the morning of the 27th of July, at which time the fleet under my command were in the following poſition:—Vice-Admiral Sir Robert Harland was about four miles diſtant, on the Victory's weather-quarter, with moſt of the ſhips of his own diviſion, and ſome of thoſe

belonging to the center. Vice-Admiral Sir Hugh Palliſer at about three miles diſtant, a point before the lee-beam of the Victory, with his main-ſail up, which obliged the ſhips of his diviſion to continue under an eaſy ſail.

The French fleet was as much to windward, and at as great a diſtance, as it had been the preceding morning, ſtanding with a freſh wind at S. W. cloſe hauled on the larboard tack, to all appearance avoiding me with the ſame induſtry it ever had done.

At this time, therefore, I had no greater inducement to form the line, than I had the morning of the former day; and I could not have formed it without greatly increaſing my diſtance from the French fleet, contrary to that plan of operation, which I have already ſubmitted to the judgment of the Court.

The Vice-Admiral of the Blue's next chargeis, "That although my fleet was already diſperſed and in diſorder, I, by making the ſignal for ſeveral ſhips in his diviſion to chace to windward, encreated the diſorder of that part of my fleet, and that the ſhips were in conſequence more ſcattered than they had been the day before; and that whilſt in this diſorder I advanced to the enemy, and made the ſignal for battle."

In this part of the charge there is a ſtudious deſign to miſlead the underſtanding, and, by leaving out times and intermediate events, to make the tranſactions of half a day appear but as a moment.—It is, indeed, impoſſible to read it, without being poſſeſſed with the idea, that at half paſt five in the morning, when I made the ſignal for ſix ſhips of the Vice-Admiral of the Blue's diviſion to chace to windward, I was in the immediate proſpect of cloſing with an enemy, approaching me in a regular line, and all their motions plainly indicating a deſign to give battle; inſtead of which, both the fleets were on the larboard tack, the enemy's fleet near three leagues, if not more, to windward, going off cloſe by the wind with a preſſed ſail. My reaſon, therefore, for making that ſignal, at half paſt five, was to collect as many ſhips to windward as I could, in order to ſtrengthen the main body of the fleet, in caſe I ſhould be able to get to action, to fill up the interval between the Victory and the Vice-Admiral, which was occaſioned by his being far to leeward; and it is plain, that the Vice-Admiral muſt have himſelf underſtood the object of the ſignal, ſince it has appeared in the courſe of the evidence, that on its being made, the Formidable ſet her main-ſail, and let the reefs out of her top-ſails; and, indeed, the only reaſon why it was not originally made for the whole diviſion was, that they muſt have then chaced as a diviſion, which would have retarded the beſt going ſhips by an attendance on the Vice-Admiral.

Things were in this ſituation, when, at half paſt nine, the French Admiral tacked, and wore his whole fleet, and ſtood to the ſouthward on the ſtarboard tack, cloſe hauled; but the wind, immediately after they wore about, coming more ſoutherly, I continued to ſtand on till a quarter paſt ten, at which time I tacked the Britiſh fleet together by ſignal. Soon after we wore about on the ſtarboard tack, the wind came two points in our favour to the weſtward, which enabled

enabled us to lie up for a part of them; but, in a dark ſquall, that ſoon after came on, I loſt ſight of the enemy for above half an hour, and when it cleared away at eleven o'clock, I diſcovered the French fleet had changed their poſition, and were endeavouring to form the line on the larboard tack; which finding they could not effect without coming within gun-ſhot of the van of the Britiſh fleet, they edged down, and fired on my headmoſt ſhips, as they approached them on the contrary tack, at a quarter after eleven, and then, and not till then, I made the ſignal for battle. All this happened in about half an hour, and muſt have been owing to the enemy's falling to leeward in performing their evolution during the ſquall, which we could not ſee, and by that means produced this ſudden and unexpected opportunity of engaging them, as they were near three leagues a-head of me when the ſquall came on.

If therefore, by making the ſignal for the line of battle, when the van of my fleet was thus ſuddenly getting within reach of the enemy, and well connected with the center, as my accuſer himſelf has admitted, I had called back the Vice-Admiral of the Red, the French fleet might either have formed their line complete, or have come down upon my fleet while in the confuſion of getting into order of battle, or (what I had ſtill greater reaſon to apprehend) might have gone off to windward out of my reach altogether, for even as it was, the enemy's van, inſtead of coming cloſe to action, kept their wind, and paſſed hardly within random ſhot.

My accuſer next aſſerts, as an aggravation of his former charge, "That the French fleet was in a regular line on that tack which approached the Britiſh fleet, all their motions plainly indicating a deſign to give battle."

Both which facts have already been contradicted by the teſtimony of even his own witneſſes; that the enemy's fleet was not in a regular line of battle, appeared by the French Admiral being out of his ſtation far from the center of his line, and next, or very near to a ſhip carrying a Vice-Admiral's flag, and from ſome of their ſhips being a-breaſt of each other, and in one, as they paſſed the Engliſh fleet, with other apparent marks of irregularity. Indeed, every motion of the French fleet, from about nine, when it went upon the ſtarboard tack, till the moment of the action, and even during the action itſelf, I apprehend to be deciſive againſt the alledged indication of deſigning battle; for if the French Admiral had really deſigned to come to action, I apprehend he never would have got his fleet on the contrary tack to that on which the Britiſh fleet was coming up to him, but he would have ſhortened ſail and waited for it, and formed in the line on the ſame tack; and even when he did tack towards the Britiſh fleet, the alledged indication is again directly refuted, by the van of the French fleet hauling their wind again, inſtead of bearing down into action, and by their hoiſting no colours when they began to engage.

Notwithſtanding theſe incontrovertible truths, my accuſer imputes it to me that a general engagement was not brought on; but it is evident, from the teſtimony of every witneſs he has called, that a general

general engagement was never in my choice; and that ſo far from its being prevented by my not having formed the line of battle, no engagement, either general or partial, could have been brought on if I had formed it; indeed it is a contradiction in terms to ſpeak of a general engagement, where the fleet that has the wind tacks to paſs the fleet to the leeward on the contrary tack.

Such was the manner in which, after four days purſuit, I was at laſt enabled, by a favourable ſhift of wind, to cloſe with the fleet of France; and if I am juſtifiable on principle in the exertion of that diſcretion which I have been ſubmitting to your judgment, of bringing, at all events, an unwilling enemy to battle, I am certainly not called upon to deſcend to all the minutiæ of conſequences reſulting from ſuch enterprize, even if ſuch had enſued as my accuſer has aſſerted, but which his own witneſſes have not only failed to eſtabliſh, but abſolutely refuſed; it would be an inſult on the underſtanding of the Court, were I to offer any arguments, to ſhew that ſhips which engage without a line of battle, cannot ſo cloſely, uniformly, and mutually ſupport each other, as when circumſtances admit of a line being formed; becauſe it is ſelf-evident, and is the baſis of all the diſcipline and practice of lines of battle. But in the preſent caſe, notwithſtanding I had no choice in making any diſpoſition for an attack, nor any poſſibility of getting to battle, otherwiſe than I did, which would be alone ſufficient to repel any charge of conſequent irregularity, or even confuſion, yet it is not neceſſary for me to claim the protection of the circumſtances under which I acted, becauſe no irregularity or confuſion either exiſted, or has been proved; all the chacing ſhips, and the whole fleet, except a ſhip or two, got into battle, and into as cloſe battle as the French fleet, which had the option by being to windward, choſe to give them. The Vice-Admiral of the Blue himſelf, though in the rear, was out of action in a ſhort time after the Victory, and ſo far from being left to engage ſingly and unſupported, was paſſed during the action by three ſhips of his own diviſion, and was obliged to back his mizen-top-ſail to keep out of the fire of one of the largeſt ſhips in the fleet, which muſt have continued near him all the reſt of the time he was paſſing the French line, as I ſhall prove ſhe was within three cables lengths of the Formidable when the firing ceaſed.

Anſwer to the Second Article.

The moment the Victory had paſſed the enemy's rear, my firſt object was to look round to the poſition of the fleet, which the ſmoke had till then obſcured from obſervation, in order to determine how a general engagement might beſt be brought on after the fleet ſhould have paſſed each other.

I found that the Vice-Admiral of the Red, with part of his diviſion, had tacked, and was ſtanding towards the enemy with top-gallant ſails ſet, the very thing I am charged with not having directed him to do; but all the reſt of the ſhips that had paſſed a-head of me were ſtill on the ſtarboard tack, ſome of them dropping to leeward, and ſeemingly employed in repairing their damages. The Victory herſelf

herſelf was in no condition to tack, and I could not immediately wear and ſtand back on the ſhips coming up a-ſtern of me out of the action (had it been otherwiſe expedient) without throwing them into the utmoſt confuſion. Sir John Roſs, who very gallantly tried the experiment, having informed the Court of the momentary neceſſity he was under of wearing back again to prevent the conſequences I have mentioned, makes it unneceſſary to enlarge on the probable effect of ſuch a general manœuvre, with all the ſhips a-head. Indeed I only remark it as a ſtrongly relative circumſtance appearing by the evidence of a very able and experienced officer, and by no means as a juſtification for having ſtood away to a great diſtance beyond the enemy before I wore, becauſe the charge itſelf is groſsly falſe. In fact, the Victory had very little way while her head was to the ſouthward, and although her damages were conſiderable, was the firſt ſhip of the centre diviſion that got round towards the enemy again, and ſome time before the reſt were able to follow her; ſince, even as it was, not above three or four were able to cloſe up with her on the larboard tack, ſo that had it even been practicable to have wore ſooner than I did, no good purpoſe could have been anſwered by it; hence I muſt have only wore the ſooner back again to have collected the diſabled ſhips which would have been thereby left ſtill farther a-ſtern.

The Formidable was no otherwiſe left engaged with the enemy during this ſhort interval, than as being in the rear, which muſt always neceſſarily happen to ſhips in that ſituation, when fleets engage each other on contrary tacks; and no one witneſs has attempted to ſpeak to the danger my accuſer complains of, except his own captain, who, on being called upon to fix the time when ſuch danger was apprehended, ſtated it to be before the Formidable opened her fire, which renders the application of it as a conſequence of the ſecond charge too abſurd to demand a refutation.

Anſwer to the Third Article.

As ſoon as I had wore to ſtand towards the enemy, I hauled down the ſignal for battle, which I judged improper to be kept abroad, till the ſhips could recover their ſtation; or at leaſt get near enough to ſupport each other in action. In order to call them together for that purpoſe, I immediately made the ſignal to form the line of battle a-head, and the Victory being at this time a-head of all the centre and red diviſion, I embraced that opportunity of unbending her main-top-ſail, which was totally unſerviceable, and in doing which, the utmoſt expedition was uſed, the ſhips a-ſtern of me doing all they could in the mean time to get into their ſtations, ſo that no time was loſt by this neceſſary operation.

The Formidable was a-head of the Victory, during this period; it was her ſtation in the line on that tack. Yet at the very moment my accuſer dares to charge me with not calling the ſhips together to renew the attack, he himſelf, though his ſhip was in a manageable condition, as appeared by the evidence of his own captain, and tho' he had wore, expecting, as he ſays, the battle to be renewed, quitted his

his ſtation in the front of that line of battle, the ſignal for which was flying; paſſed to leeward of me, on the ſtarboard tack, which I was advancing to the enemy, and never came into the line during the reſt of the day.

In this ſituation I judged it neceſſary that the Vice-Admiral of the Red, who was to windward, and paſſing forward on my weather-bow, with ſix or ſeven ſhips of his diviſion, ſhould lead on the larboard tack, in order to give time to the ſhips which had come laſt out of action to repair their damages, and get collected together; and the ſignal appointed by the 21ſt article of the fighting inſtructions not being applicable, as the French fleet was ſo nearly a-head of us, that by keeping cloſe to the wind, we could only have fetched them, I made the Proſerpine's ſignal, in order to have diſpatched Captain Sutton with a meſſage to Vice-Admiral Sir Robert Harland, to lead the fleet to the larboard tack; but before he left the Victory, with the orders he had received, the French fleet wore and ſtood to the ſouthward, forming their line on the ſtarboard tack, their ſhips advancing regularly out of a collected body, which they had got into from the operation of wearing, and not from any diſorder or confuſion that really exiſted. I could have derived no immediate advantage from it, not having a ſufficient force collected to prevent their forming, by an attempt to renew the attack. The Victory was at this time the neareſt ſhip to the enemy, with no more than three or four of the centre diviſion, in any ſituation to have ſupported her, or each other in action. The Vice-Admiral of the Blue was on the ſtarboard tack, ſtanding away from his ſtation, not obſerving the ſignal that was flying to form the line, and moſt of the other ſhips, except the Red diviſion, whoſe poſition I have already ſtated, were far a-ſtern, and five diſabled ſhips at a great diſtance on the lee-quarter.

I truſt they will convince the Court, that I had it not in my power to collect the fleet together to renew the fight at that time, and that from their not being able to follow me, I conſequently could not advance with them; that I did not haul down the ſignal for battle till it ceaſed to be capable of producing any good effect; that during the whole time I ſtood towards the enemy, I endeavoured by the moſt forcible of all ſignals, the ſignal for the line of battle, to call the ſhips together in order to renew the attack; that I did avail myſelf of the ſhips that were with the Vice-Admiral of the Red, as far as circumſtances admitted; and that I therefore did do the utmoſt in my power to take, ſink, burn, and deſtroy the French fleet, which had attacked the Britiſh fleet.

Anſwer to the Fourth Article.

The French fleet having wore and began to form their line on the ſtarboard tack, by the wind, which if they had kept would have brought them cloſe up with the centre diviſion, ſoon afterwards edged away, pointing towards four or five of the diſabled ſhips, which were at a diſtance to leeward, and with evident intention to have ſeparated them from the reſt of the fleet; to prevent which, I made

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were at a diſtance to leeward, and with evident intention to have ſeparated them from the reſt of the fleet; to prevent which, I made the ſignal to wear, and ſtood athwart their van in a diagonal courſe, to give protection to thoſe crippled ſhips, keeping the ſignal for the line flying, to form and collect the fleet on the ſtarboard tack. As I had thus been obliged to alter my diſpoſition before Captain Sutton left the Victory, with my former meſſage, I diſpatched him with orders to the Vice-Admiral of the Red to form with his diviſion at a diſtance a-ſtern of the Victory, to cover the rear, and to keep the enemy in check, till the Vice-Admiral of the Blue ſhould come into his ſtation, with his diviſion, in obedience to the ſignal. Theſe orders the Vice-Admiral of the Red inſtantly obeyed, and was formed in my wake before four o'clock, when finding, that while by the courſe I ſteered to protect the crippled ſhips, I was nearer the enemy, the Vice-Admiral of the Blue ſtill continued to lie to windward, and by ſo doing kept his diviſion from joining me, I made the ſignal for ſhips to bear down into my wake, and that it might be the better diſtinguiſhed (both being ſignals at the mizen-peak) I hauled down the ſignal for the line about ten minutes, and then hoiſted it again. This ſignal he repeated, though he had not obſerved that for the line of battle; but by not bearing down himſelf, he led the ſhips of his diviſion to interpret his repeating it as requiring them to come into his wake inſtead of mine.

Having now accompliſhed the protection of the diſabled ſhips, and the French fleet continuing to form their line, ranging up to leeward, parallel to the center diviſion, my only object was to form mine, in order to bear down upon them to renew the battle; and therefore, at a quarter before five o'clock, after having repeated the ſignal for ſhips to windward to bear down into my wake, with no better effect than before, I ſent the Milford, with orders to the Vice-Admiral of the Red to ſtretch a-head, and take his ſtation in the line, which he inſtantly obeyed; and the Vice-Admiral of the Blue being ſtill to windward, with his fore-top-ſail unbent, and making no viſible effort to obey the ſignal, which had been flying the whole afternoon, I ſent out the Fox at five o'clock, with orders to him to bear down into my wake, and to tell him, that I only waited for him and his diviſion, to renew the battle. While I was diſpatching theſe frigates, having before hauled down the ſignal to come into my wake, I put aboard the ſignal for all ſhips to come into their ſtations, always keeping the ſignal for the line flying. All this producing no effect on the Vice-Admiral of the Blue, and wearied out with fruitleſs expectation, at ſeven o'clock I made the ſignal for each particular ſhip of the Vice-Admiral of the Blue's diviſion to come into her ſtation; but before they had accompliſhed it, night put an end to all further operations.

It may be obſerved, that amongſt theſe ſignals I did not make the Formidable's. If the Vice Admiral chuſes to conſider this as a culpable neglect, I can only ſay, that it occurred to me to treat him with a delicacy due to his rank, which had ſome time before induced me to ſend the meſſage by Captain Windſor, the particulars of which he has already faithfully related to the Court.

I truſt I have little reaſon to apprehend that the Court will be inclined to conſider my conduct as I have ſtated it, in anſwer to this fourth article of the charge, as diſgraceful to the Britiſh flag! After I had put upon the ſame tack with the enemy, to protect the diſabled part of my fleet, and to collect the reſt together, there would have been little to do to renew the battle, but bearing right down upon the enemy, if my accuſer had led his diviſion, in obedience to the repeated ſignals and orders which I have ſtated. The Victory never went more than two knots, was under her double-reefed top-ſails, and fore-ſail much ſhattered, which kept the ſhips that were near her under their top-ſails, and ſuffered the French fleet, which might always have brought me to action if they had inclined to do it, to range up parallel with the center, under very little ſail. It was to protect the five diſabled ſhips above-mentioned, and to give the reſt time to form into ſome order, that I judged it might be expedient to ſtand as I did, under that eaſy ſail, than to bring to with my head to the ſouthward. The Court will judge, whether it was poſſible for any officer in the ſervice really to believe, that theſe operations could give the leaſt appearance of a flight, or furniſh a rational pretence to the French Admiral to claim the Victory, or publiſh to the world, that the Britiſh fleet had run away.

Anſwer to the Fifth Article.

On the morning of the 28th of July, the French fleet, (except three ſail which were ſeen upon the lee-quarter) was only viſible from the maſt-heads of ſome of the ſhips of the Britiſh fleet, and at a diſtance from me, which afforded not the ſmalleſt proſpect of coming up with them, more eſpecially as their ſhips, though certainly much damaged in their hulls, had not apparently ſuffered much in their maſts and ſails. Whereas the fleet under my command was generally and greatly ſhattered in their maſts, yards, and rigging, and many of them unable to carry ſail. As to the three French ſhips, I made the ſignal at five o'clock in the morning for the Duke, Bienfaiſant, Prince George, and Elizabeth, to give them chace, judging them to be the propereſt ſhips for that purpoſe, but the two laſt were not able to carry ſufficient ſail to give even countenance to the purſuit; and looking round to the general condition of my fleet, I ſaw it was in vain to attempt either a general or a partial chace Indeed my accuſer does not venture to alledge that there was any probability, or even poſſibility, of doing it with effect, which deſtroys the whole imputation of his charge,

Under theſe circumſtances I could not miſtake my duty, and I was reſolved not to ſacrifice it to an empty ſhow and appearance, which is beneath the dignity of an officer, unconſcious of any failure or neglect. To have urged a fruitleſs purſuit with a fleet ſo greatly crippled in its maſts and ſails, after a diſtant and flying enemy, within reach of their own ports, and with a freſh wind blowing fair for their port, with a large ſwell, would have been not only wantonly expoſing the Britiſh fleet under my command without end or object, but miſleading and defeating its operations, by delaying the refitment neceſſary for carrying on the future ſervice with vigour and effect.

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My accuſer aſſerts, by a general concluſion to the five articles exhibited againſt me, that from what he ſtates as inſtances of miſconduct and neglect in me, "a glorious opportunity was loſt of doing a moſt eſſential ſervice to the ſtate," and that the honour of the Britiſh navy was tarniſhed.

The truth of the aſſertion, that an opportunity was loſt, I am not called upon either to combat or deny. It is ſufficient for me, if I ſhall be ſucceſsful in proving, that that opportunity was ſeized by me, and followed up to the full extent of my power. If the Court ſhould be of that opinion, I am ſatisfied; and it will then reſt with the Vice-Admiral of the Blue, to explain to what cauſe it is to be referred, that the glorious opportunity he ſpeaks of was loſt, and to whom it is to be imputed, if the fact be true, that the honour of the Britiſh navy has been tarniſhed.

Having now, Sir, finiſhed my replies, I ſhall call witneſſes to prove my innocence. I have heard it aſſerted as matter of right to alter a log-book. I will only ſay, that there is a wide difference between correcting inaccuracies, and malicious alterations, for the purpoſe of aiding malicious proſecutions.

As to my proſecutor, I have even his own letters, of as late date as the 5th of October, wherein he thus writes to me: "I know that you would rather meet the French fleet." Yes, Sir, that very French fleet which he afterwards accuſed me of running away from! I cannot produce theſe letters in evidence, but I will ſhew them to any gentleman out of Court who deſires to ſee them. I will alſo ſhew to any gentleman a paper which my proſecutor requeſted me to ſign but a very ſhort time ago, and I refuſed to ſign it. In the news-papers my proſecutor denied receiving any meſſage by the Fox frigate. Capt. Windſor ſwore to the delivery of ſuch a meſſage. He proved in evidence, that he received the meſſage from me at five o'clock, and delivered it to the Vice-Admiral himſelf at half paſt five o'clock. Captain Bazely endeavoured to refute this evidence; but I ſhall call witneſſes to prove the delivery of the meſſage. My conſcience is perfectly clear. I have no ſecret machination, no dark contrivances to anſwer for. My heart does not reproach me. As to my enemies, I would not wiſh the greateſt enemy I have in the world to be afflicted with ſo heavy a puniſhment as my accuſer's conſcience.

On the finiſhing of this ſpeech the hall reſounded with ſhouts of applauſe.

TWENTY-SECOND DAY, MONDAY, *February* 1.

AT ten o'clock the Court was reſumed. The firſt witneſs called by Admiral Keppel, was Vice-Admiral Sir Robert Harland.

Admiral Keppel. When the French were ſeen in the morning of the 24th, were they to windward or to leeward?—To windward.

Had they it in their power to come to action that day, on the 25th, or on the 26th?—They had it in their power on any of thoſe days.

Did I purſue them with a preſs of ſail till I brought them to action ?—You did.

If you had commanded a Britiſh fleet of the ſame number of ſhips in the ſituation the French were then, would you have heſitated a moment to bring them to action ?—Not a moment.

If I had purſued them in a line of battle, could I have preſerved my nearneſs to them ?—I think not.

On what tack did you ſee the French fleet in the morning of the 27th ?—On the larboard tack.

Did they ſhew any more intention while on the larboard tack, or after they came to the ſtarboard, of coming to action that day ?—If this queſtion means while they were upon the larboard tack, and after they had changed to the ſtarboard at eight o'clock, they ſhewed no more deſign of coming to action than on the preceding days.

If I had formed my line of battle while they were on the ſtarboard tack, could I have brought them to action that day ?—You could not, unleſs they had choſen to come to you.

Was there any ſquall that obſcured them that morning ?—They were obſcured frequently.

At what time did the fighting begin ?—Between eleven and twelve.

On what tack were they then ?——On the larboard tack.

Were not the centre and rear diviſions in ſome confuſion when we paſſed them ?—When we paſſed them, the van was not well connected with the centre, nor the centre with the rear.—There were ſix ſhips that had come up with the van, and two more near them that ſeemed in a confuſed ſtate.

Did they begin their firing at your ſhip at a very great diſtance ?—They did.

If I had ordered ſhips of your diviſion to chace to windward, and after that I had come engaged in the ſhip where my flag was, ſo that I could not order diſtant ſhips, would you not have thought yourſelf warranted to have called thoſe ſhips to you, if you had judged it for the ſervice of the moment to have done ſo ?——I ſhould have been happy to have rendered any ſervice to you while I had a command in it ; and the occaſion, as ſtated in the queſtion, would certainly have warranted me in calling the ſhips to me.

Did you ſee the Formidable after you had paſſed the line, while ſhe continued engaged ?—I ſaw her when ſhe came out of the cannonade, and when I was going into your wake.

When you ſaw her coming out of the fire of the rear of the French line, did there appear the ſmalleſt danger of her being cut off ?—There did not appear the ſmalleſt intention of doing ſo.

After you had come out of action, and leading on the larboard tack on the Victory's weather-bow, how many ſhips of your diviſion were there connected together ?—At moſt ſeven.

How many points of the compaſs were you to windward of the French ?—They were upon my lee-bow, and a-head.

If I had directed you to lead down upon the enemy, had I a number of ſhips with me to have ſupported you in re-attacking the French fleet?—Moſt certainly you had not.

Did you ſee the French ſhips draw out on the ſtarboard tack, and form their line?—I did.

Did they, in that operation, appear in a connected and cloſe body?—They were not in a regular line, and therefore not in a cloſe body.

Had it a confuſed appearance, or did it ſeem the reſult of their change of poſition?—There appeared no confuſion.

In the ſituation the Engliſh fleet were in, was it in my power, as an officer, to have prevented them from forming their line?—It was no more in your power to have done that, than it was in your power to collect your ſhips for that purpoſe.

What then would have been the probable conſequence, if I had ordered you to have attacked them?—I ſhould have engaged; and the French would have deſerved to be hanged if they had not taken my whole diviſion.

Did you receive any orders from the Porcupine that afternoon?—Yes.

What were they?—To fall, with my diviſion, into the rear of the Victory.

If you had not received ſuch orders, did you ſee reaſon to put yourſelf in that ſituation, for the ſafety of the moment, at your riſk as an officer?—Before I received the orders, I ſaw the neceſſity there was of taking that poſt, and was doing it on my own riſk.

What were your inducements?—Seeing the Commander in Chief, unſupported, in the power of the whole French force that was a-ſtern of him.

If the Vice-Admiral of the Blue, while you was in the Victory's rear, had fallen down to have taken his ſtation, would you not have thought yourſelf warranted to have made ſail to the head of the fleet, even if ſuch orders had not reached you?—I ſhould have wiſhed to have received the orders; but if I had not, the ſame reaſon that had induced me to go into the rear, would have led me to the van for the ſervice of the whole.

What time did you receive orders to take your own ſtation?—About five o'clock.

Was the ſignal for the line of battle flying all the afternoon, except about ten minutes, when the ſignal was hoiſted for ſhips to come into the line?—It was.

Had the Britiſh fleet, by bearing to the ſouthward on the ſame tack with the French, (under the ſail they carried) the appearance of a flight?—O! FIE, NO!

Were we then avoiding the French fleet, or were we in doing ſo executing a proper manœuvre to form our line, and bring on a general and deciſive engagement?—You were uſing every means to collect your force, and I doubt not but if you had been able to do ſo, you would have brought on a general and deciſive engagement.

Did I neglect any time in the afternoon to bring them to action while there was day-light?—If I did not ſay it before, I ſay it now, you had it not in your power to bring them to action.

Did you obſerve what ſail the Victory was under in the afternoon? —Under her top-ſails ſometimes, and ſometimes under her top-ſails and mizen.

What ſail did you carry in the Queen during the night to preſerve your ſtation?—Sometimes our top-ſails, and ſometimes under our top-ſail fore-ſail reefed.

Did you carry your diſtinguiſhing lights all night?——I always carried my diſtinguiſhing lights.

Were the Victory's from the bowſprit end ſeen from the Queen all night?—I ſaw them myſelf.

Do you recollect at what a rate you went in the night?—I think ſometimes under two knots, and never above three.

On the 28th in the morning, did it not appear that the French had run off in the night?—The French made their eſcape in the night.

On the morning of the 28th, were the French ſeen from the Queen's maſt-head?—They were ſtanding to the ſouthward.

If I had attempted the purſuit of them, was there the leaſt probability of reaching them conditioned as the Engliſh fleet was, before they had got into Breſt?—There was not.

You have heard the charge read, I therefore deſire of you to ſtate to the Court any inſtance, if you ſaw or knew of any ſuch, in which I negligently performed my duty on the 27th or 28th?—I know of none, and therefore I cannot ſtate any.

Mr. MOORE, Under-Secretary to Admiral Keppel was called.

Admiral Keppel. Did I not appoint you to be near my perſon, and take minutes and obſervations for my uſe?—You did.

Do you remember the relative ſituation of the fleet in the morning of the 27th?——He begged leave to refer to his minutes; he had taken them at the time, from his own obſervation, it had been in his cuſtody ever ſince, undergone no alteration or correction, and was then in his hand.—At half after five, the Vice-Admiral of the Red, with moſt of the ſhips of his diviſion, and ſome of the centre, were about three miles to windward of the Victory, and the Vice-Admiral of the Blue was between three and four miles to leeward, except the Ocean.

Do you recollect what ſail the Vice of the Blue carried?—The Formidable's main-ſail.

What ſituation was the French Admiral with reſpect to the Victory in the middle of the engagement?—She was nearly on the weather-beam in the centre of her own diviſion.

Did you ſee a ſignal made in the morning of the 27th for ſhips of the Vice-Admiral of the Blue's diviſion to chace to windward?—At half after five ſignals were made for ſix ſhips to chace to windward.

What did it appear to you was the intention of that ſignal?—Moſt of the ſhips of the centre were to windward of the Victory, and there was a large ſpace between the centre and rear, and I conclude it was intended to bring up the beſt ſailing ſhips to ſupport the centre.

Was there any greater indication at that time of the French intending to fight than on the preceding days?——None; they were cloſe hauled, carrying as much ſail as the worſt ſailing ſhips could keep up with.

Did you obſerve the French fleet change their poſitions any time in the morning of the 27th, between eight and ten o'clock?—My obſervation was principally attached to the French Admiral. At half paſt nine he tacked, and continued to carry the ſame ſail as they had on the larboard tack.

What time did the Britiſh fleet tack?—Soon after the French fleet had tacked, the wind changed ſomewhat to the weſt, ſo that the Britiſh fleet ſtood on till a quarter paſt ten, when we changed from the larboard to the ſtarboard tack.

Was there any alteration in the wind at this time?—It ſhifted near two points. We ſoon afterwards, in a thick ſquall, loſt ſight of the French fleet.

After this, did you ſee the French fleet get upon the larboard tack, and at hat time?—We had loſt ſight of them from twenty minutes after ten to eleven; when we recovered the ſight of them, they appeared in conſiderable confuſion, and part of them, bearing S. S. E. and they were then getting on the larboard tack. That body of them which bore S. S. E. were in ſuch confuſion, that the Admiral and moſt people on board thought they were a-board of each other.

At what time did the firing begin?—At 15 minutes after eleven.

The French ſhips that began action, had they their colours flying?—Neither the Britiſh nor the French ſhips had their colours flying.

At what time did I make the ſignal for battle?—At 20 minutes after 11.

Was the French fleet in a regular line of battle when the action began?——The French van was very irregular; ſome more than a mile to windward of others, at very unequal diſtances from each other. They kept their wind as they approached us; and what was properly their centre was pretty compact, but not regular; the rear was much to windward of the Bretagne, with the ſhips about her, and muſt have paſſed the Victory while ſhe was engaged with the centre.

Were the greateſt part of the Britiſh ſhips, when they came to action, though not in a line, in a ſituation ſpeedily to ſupport each other?—They were.

How long was it before the Victory engaged with the French Admiral, after ſhe had come into the action?—Twenty-ſeven minutes.

How many ſhips of the enemy's fleet fired upon the Victory before the Admiral?——Almoſt all the ſhips of their van fired upon the Victory.

Did the Victory return the fire of thoſe ſhips?—Not one.

How many ſhips a-head of the Admiral fired to do execution?—Three ſail fired upon us, but unleſs two or three ſhot that were fired, the Victory reſerved her fire for the Bretagne.

How did the French Admiral appear to be ſituated with reſpect to his fleet?——At a quarter before twelve, when we began to fire on the Bretagne, ther was a three-decked ſhip with a white flag at her fore-top-maſt head, cloſe a-ſtern of the Bretagne; there were then three ſail of private ſhips.

At what time did the Victory paſs the rear of the French fleet?—At one o'clock.

At what time did I make the ſignal to wear back towards the enemy?—Ten minutes after, but the Victory could not be wore till a quarter before two.

What ſhips wore with the Victory, and when was the ſignal hauled down?—Not a ſhip wore with the Victory. The Prince George ſteered on, and about a quarter of an hour after, ſhe and ſome other ſhips wore; the ſignal was hauled down juſt about the time we wore; from a quarter before two till three there was not a ſingle ſhip formed and connected with the Victory.

At what time was the ſignal for the line of battle made after being on the larboard tack?——At two o'clock.

Did you obſerve any ſhips whilſt the Victory was on the larboard tack fall into their ſtations and cloſe with the Victory?—There were no ſhips on the ſame tack but the Prince George, the Bienfaiſant, and the Foudroyant, and none of theſe were in their ſtation; the Valiant came about, but could not join us, and all theſe were more than a mile from us.

What was the ſituation of the French fleet while we ſtood after them?—Three ſail were to windward, a large body right a-head, and their ſternmoſt ſhips on our lee-bow. At half after two, they were about three miles from us. They then began to get round to form their line, and ſet their head, ſo that they would have weathered the Victory, but at three o'clock they pointed their ſhips to four or five ſhips that were diſabled, and far to leeward.

Did you obſerve one of their ſhips go off before the wind?—At half paſt two, I ſaw one go off with her main-yard and mizen-top-ſail gone, and was ſoon after following by a frigate.

What was the poſition of the Red diviſion while we were on the larboard tack?—When I firſt ſaw the Red diviſion after the action, they were on the Victory's lee-bow, ſtanding towards us; they continued to ſtand on the larboard-tack, ſome of their ſhips paſſing us very cloſe. At a quarter before two, when we wore, the Vice-Admiral of the red with ſeven ſail, himſelf included, were on the Victory's weather-bow. At half after two, when the French were forming their line, and we ſtanding towards them, the Vice-Admiral of the Red was a little before the beam. At three o'clock, he was upon the larboard bow, full two miles and a half from us.

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Can you deſcribe the ſituation of the Britiſh fleet when the French began to form their line?—The Vice-Admiral of the Red, with ſix or ſeven ſhips, was pretty well connected. The Vice-Admiral of the Blue was about paſſing us, ſtanding on the larboard tack; four or five ſail were far to leeward; four ſail of the centre diviſion in different poſitions round us, which four ſhips, except the Vice-Admiral of the Red, were all that were on the larboard tack.

When was the ſignal made for the Britiſh ſhips to wear to the ſouthward?—At twenty minutes paſt three.

Do you recollect the poſition of the Vice-Admiral of the Blue at that time?——We paſſed the Formidable to leeward, and after that ſeveral of the ſhips of the Blue diviſion continued to join him; and they remained to windward.

Was the ſignal flying at that time to form the line of battle?—The ſignal was made at two o'clock, when we were on the larboard tack, and was continued till within twenty minutes of four.

When was it hoiſted again?——It was hauled down at that time to let the fleet ſee the ſignal for the ſhips to windward to come down into the Admiral's wake; and in about ten minutes after, the fleet having ſeen that ſignal, the ſignal for forming the line of battle was again hoiſted, and continued flying, I believe, all night.

After the Victory was about on the ſtarboard tack, did ſhe lead from the wind to give protection to thoſe ſhips that were to leeward?—On our firſt coming about, to ſail on the ſtarboard tack, ſhe ſtood upon his wind for about ten minutes, to endeavour to collect ſome of the ſhips; but the Admiral gave that up, and at the time he ordered the Victory to be kept from the wind, he obſerved that the French had a deſign to affront him, by making an attack upon the diſabled ſhips to leeward.

What time was the ſignal for the ſhips to windward made, to come into the Victory's wake?——At forty minutes after three, and was hauled down ten minutes before four. At half paſt four the ſignal was again made.

What was the poſition of the two Vice-Admirals then, and until five o'clock?—The Vice-Admiral of the Red, with ſix or ſeven ſail, was forming a-ſtern of the Victory, in conſequence of a meſſage that had been ſent to him by Capain Sutton. The Vice-Admiral of the Blue, with ſeven or eight ſail, was to windward, keeping their wind between two or three miles from us. I could count every gun and every part diſtinctly.

What had been the conduct of the French fleet, and how were they ſituated with reſpect to the Engliſh fleet, and what was their ſituation at that time?—They had held their courſe nearly parallel to that held by the Victory. They were at half paſt four about three miles a-ſtern, and to leeward of the Victory.

At that time what ſail had the Victory ſet?—Her fore and mizen-top-ſail ſet, her main-top-ſail, with two reefs in it, was alſo ſet.

Did you hear any meſſages or orders ſent by frigates in the after-

noon ?—At five o'clock the Milford was ſent to acquaint Sir Robert Harland to form a-ſtern of the Victory. The Fox was ſent immediately after to Sir Hugh Palliſer to acquaint him, that the Admiral only waited for him, and the diviſion with him, to bring the enemy to action.

Dou you remember any general ſignal that was made at that time for ſhips to get into that ſtation?—At five minutes paſt five a ſignal was made for all ſhips to get into their ſtations, a Spaniſh flag being at the main-top-maſt head.

What ſhips were there a-ſtern of the Victory after Sir Robert Harland had left the rear?—Not one but the Foudroyant.

Did the Vice-Admiral of the Blue obey the general ſignal, and bear down any part of the afternoon?——No.

What was the poſition of the Vice-Admiral of the Blue from five till ſeven o'clock?—He was ſtill on the ſame wearing, but kept his wind.

Were there any particular ſhips ſignals made about ſeven o'clock for them to come into their ſtation?—At ſeven, particular ſignals belonging to every ſhip of the Vice-Admiral of the Blue's diviſion, except the Formidable's, was made: The general ſignal for ſhips to come into their ſtation was flying at the ſame time.

What ſail was the Victory under after the laſt time you ſpoke of?—Double reefed top-ſails and fore-ſails, going about two knots.

Did ſhe make leſs ſail than that before dark?—At eight o'clock we cloſe-reefed our top-ſail.

What was the relative ſituation of the two fleets when night ſet in?—The Red diviſion was formed a-head of the Victory; moſt of the ſhips of the centre had joined us. Two or three ſhips were formed a-ſtern of the Victory; the Vengeance more a-ſtern. The Vice-Admiral of the Blue, with his diviſion, were ſtill to windward about three miles, except three or four ſail of them which had began to obey the ſignals to come down into the line. The French fleet were ſteering a parallel courſe to the Victory; the third ſhip of the French van a-breaſt of our quarter, about a mile and a half to leeward of us; the French line was formed with fourteenſail a-head, and fourteen a-ſtern of the Admiral, and the ſhips were under different ſail.

Was the ſignal for ſhips to come into their ſtation, and for forming the line, flying till dark?—Long after dark.

Did you ſee the Vice-Admiral repeat the ſignal for the line, or for ſhips to come into their ſtation any part of the afternoon?—In the beginning of the afternoon, ſhe had then no ſignals flying. At half after four ſhe repeated the ſignal for ſhips to come into the Admiral's wake, but I did not ſee her repeat any other the whole day.

Where was ſhe when you laſt ſaw her in the evening?——About three miles from the Victory, ſtanding upon a wind, about two or three points abaft the beam.

In the morning of the 28th, how many of the French fleet were in ſight?—Three ſail; one much larger than the others.

What diſtance were they from the Victory?—Three miles.

Were any ſignals made to chace thoſe ſhips?—Signals were made for the Bienfaiſant, the Duke, the Prince George, and the Elizabeth, but the laſt informed the Admiral, ſhe could not carry ſail, and it was viſible the Prince George could not make ſail. [Withdrew.]

Mr. ROGERS, Secretary to Admiral Keppel was then called.

Admiral Keppel. Did you uſually take notes at my deſire during the late war, and did you on the 27th of July?—I had the honour to attend on you in that ſituation during the late war, and in the ſame capacity on the 27th of July, and it is my greateſt pride.

What time did the French begin to fire?—Twenty minutes before eleven.

When did I make the ſignal to engage?—Forty minutes after eleven.

What ſhip did the Victory firſt engage?—A three-decker with a flag at the main-top-maſt head.

Did I paſs any other three-decker after?—Yes, there was another which followed the firſt cloſe, and approached us very near indeed, ſo as to appear as coming on board us.

In what part of the French fleet were the two Admirals?—Very near the rear.

When did the Victory paſs the rear of the French fleet and ceaſe firing?——At one o'clock, or a few minutes paſt.

When did I make the ſignal for the fleet to wear?——Forty-five minutes paſt one.

When was the ſignal for battle hauled down?—Near that time.

What number of ſhips wore with the Victory, when ſhe wore to get on the larboard tack?—I ſaw few or none.

When, after being on the larboard tack, was the ſignal for line of battle made?—At two o'clock by my watch.

When was it made to wear to the ſouthward again?——Twenty minutes paſt three.

Were the French then forming their line?—They were drawing out in a body forming a line.

Had they before been ſtanding towards the Victory, how were they ſteering, and how long had they been ſo ſtanding?—I cannot anſwer that queſtion directly. When the Victory wore to ſtarboard tack they were on her ſtern.

Before the Victory wore to the ſtarboard tack, were the centre or the Vice of the Blue's diviſion cloſely connected with her?—None could be ſaid ſo to be.

Did you obſerve, after wearing, ſome Britiſh ſhips repairing their damages ſituated ſome diſtance to leeward?—Yes, four.

Did the enemy's van point towards them?—It did ſo; they kept away ſeemingly for that purpoſe.

Did the Victory edge away a point or two towards them to ſecure their junction ?—She did.

Was the ſignal for line of battle flying when I was to ſouthward, and till dark, or was it ever hauled down, to ſhew that other ſhips were to come into my wake ?—From two o'clock till dark, according to my notice, it was flying ; but I heard it was hauled down for the purpoſe of ſhewing another flag.

Did you ever obſerve the ſignal for line of battle a-head, repeated on board the Formidable during that afternoon ?—No.

When did I ſend the Milford to Sir Robert Harland that afternoon, after being on the ſtarboard tack ?—Three quarters paſt four, by my watch, the meſſage was ſent him.

When did I ſend the Fox to Sir Hugh Palliſer ?——I cannot ſay as to the minute, but it was directly after hailing the Milford, which I have conſidered as at, or rather before five.

What orders did I ſend by the Fox ?—To inform the Vice-Admiral of the Blue, that you only waited for him, and the ſhips of his diviſion, to renew the action.

Did you obſerve the Fox ſpeak to, or range near the Formidable ?—I ſaw the Fox cloſe under the lee-quarter of the Formidable.

At what time ?—About half an hour after five.

Did the Vice of the Blue bear down in conſequence of my orders ?—I ſaw no motion made on board the Formidable to comply with thoſe orders, though I watched her attentively.

How far upon the weather-quarter did ſhe then appear ?—Pretty far drawn upon the quarter, I think.

Were any ſignals made about ſeven o'clock on board the Victory ?—Several pennants thrown out for ſhips to come into their ſtations.

How was the Vice of the Blue then ſituated ?—I obſerved no alteration in his ſituation.

How many of his ſhips bore down ?—Some did ; I cannot ſay how many.

Were the French fleet ſeen on the morning of the 28th from the Victory ?——At the opening of the day I ſaw three ſhips, one of which I kept my eye on, at times, moſt of the night.

Did I ſend ſhips to chace them ?——There were ſignals made for ſhips to chace.

What ſhips ?——Prince George, Elizabeth, Bienfaiſant, and I believe the Duke.

Was it obſerved afterwards that ſome of them were crippled ?—I obſerved particularly the Prince George could ſet no ſail upon his fore-top-maſt.

Do you recollect the trouble and perplexity in my directing, and your copying the letter deſcriptive of the action of the 27th, ſo as not to affect the Vice-Admiral of the Blue's character ?—I perfectly recollect

collect your difficulty to relate, in the rough draught, facts, without cenſuring the man whom you then thought your friend, and whoſe courage I know you thought well of.

If the ſignal for line of battle had been flying on board the Formidable, was you ſo ſituated as to ſee it?—If it had been flying, I think I might have ſeen it.

Did you hear the Admiral expreſs his diſpleaſure at the ſhips of the Blue diviſion not bearing down, and ſay, if they had done ſo, that he would have renewed the action?—The Admiral expreſſed the greateſt anxiety and uneaſineſs at the ſhips not bearing down, and it was my idea, and, I believe, the ſenſe of all the ſhip, that he only waited for theſe ſhips to renew the action.

Croſs-Examination by Sir Hugh Palliſer.

Are the hours and minutes marked in your minutes, when the orders were given to the Fox?—The time of hailing the Fox is marked at three-quarters paſt four, and the meſſage was delivered ſo ſoon after, that I did not note it, but I know it was not more than five o'clock.

As the Formidable was ſo much a-ſtern, are you ſure that the ſignal might not be flying at the mizen-peak?—I did not ſee it.

TWENTY-THIRD DAY, TUESDAY, *February* 2.

AT ten o'clock the Court was reſumed, when REAR-ADMIRAL CAMPBELL was called by Admiral Keppel.

Admiral Keppel. What day was the French fleet firſt diſcovered? On the 23d.

Were the French fleet able to determine the force of the Britiſh fleet then?—Certainly not.

What were the poſitions of the Engliſh and French fleets in the morning with reſpect to each other?——The French fleet was on the weather-bow, at a conſiderable diſtance.

Can you inform the Court what ſignals I made that morning, and what were the objects of them?—The firſt ſignal was to form the line of battle, but ſeeing the French ſetting ſail to get off, the ſignal for chacing was hoiſted.

Do you remember Captain M'Bride's coming on board the Victory on the morning of the 24th, to give an account of ſome obſervations that he had made on the French fleet?—Yes; and gave an account of ſome French ſhips that he ſaw to leeward; one in particular without her fore-top-maſt, and another without her main-yard, and he adviſed us to bear down, and either to cut them off, or force the French to action for their protection.

What was the order given to Captain M'Bride?—He was ordered with another ſhip to chace thoſe two ſhips.

Do you recollect two other ſhips of the French fleet that the Britiſh fleet cut between, and ſeparated from the French fleet?—Yes, I do recollect

recollect very well two large ſhips in the morning of the 24th on the lee-bow, which were cut off by the general chace, and they went off.

If the French Admiral had ever intended to give battle to the Engliſh fleet, was not the junction of theſe ſhips to the main body a temptation to bring it on that morning?—Moſt certainly.

Do you recollect my making the ſignal for the line of battle that afternoon again?——Yes.

Did not the French fleet avoid us every day?—Yes.

If you had commanded an Engliſh fleet in the ſituation the French were with us, would you have heſitated one moment to have come to battle on any of thoſe days, on account of wind and weather?——I ſhould not.

If I had purſued in line of battle, could I have preſerved my nearneſs to the French fleet, or even have kept ſight of them?—No: for as it was, you were more than once in danger of loſing ſight of them, and had actually loſt ſight of them one morning for about an hour.

I ſhould be glad if Admiral Campbell would give an account of the ſituation, and the motions of the Engliſh and of the French fleets on the 27th at day-light, and of what paſſed?—At day-break the French Admiral was to windward for about three leagues on the weather-beam of the Engliſh Admiral; the Vice-Admiral of the Red on the weather-quarter of the Victory, with his diviſion. The Vice-Admiral of the Blue a little before the lee-beam, the Vice-Admiral with his main-ſail up. About nine o'clock the whole of the French fleet were about.

When the ſignal was made for the ſhips of the Blue diviſion to chace, was there any greater indication of the French intending to come to action, than on the preceding days?—No, by no means.

What would have been the conſequence if I had formed the line of battle, inſtead of cloſing with them in the manner I did?—You would have increaſed the diſtance as much as it was at the moment you firſt ſaw them.

Would that have been the way of bringing them to action?—No, quite the contrary.

From the time that I tacked by ſignal, what paſſed before I paſſed the rear of the French fleet?—The French fleet tacked by ſignal, and the wind changing ſoon after, we ſet our ſtay-ſails and main-top-gallant-ſail, in order to near them. When the ſquall cleared away, we found the French fleet had altered their courſe, and were very near to Sir Robert Harland's diviſion; and ſeeing ſome of their ſhips in confuſion, we preſſed all the ſail we could; and when we came up to the French Admiral, we engaged, and continued to fire upon the ſhips in ſucceſſion till we paſſed the line. The van of the French wore in a pretty regular line, except in point of diſtance; but the reſt of their fleet was by no means in a regular line.

I am charged with ſtanding a great way to the ſouthward before I wore; I deſire you will inform the Court, whether it was practicable or expedient for me to wear ſooner?—No, it was not.

When

When I did wear, were any of the ſhips about me able to wear with me, or did they ?—No, none of them wore with you that I ſaw.

Had you any reaſon to believe, from any thing you ſaw, or was acquainted with, that the Vice-Admiral of the Blue was expoſed to be cut off ?——No.

When was the ſignal for battle hauled down ?—Orders were given to haul it down immediately after the ſhips were out of engaging diſtance.

As I am charged with hauling it down at that time, was it in your opinion proper to be kept up ?—No, it was not.

Did I not make the ſignal for the line when I hauled down the ſignal for battle ?——It was immediately made on our wearing to the larboard tack.

Was that the moſt proper ſignal for calling the ſhips together ?—Undoubtedly it was.

I am charged with ſhortening ſail, when advancing towards the enemy after I had wore. I aſk you if I had ſhips enough to enable me to advance faſter ?——No, the whole time that the Admiral ſtood towards the enemy, he had not got one ſhip a-head of him, nor any cloſed with him a-ſtern. The Vice-Admiral of the Blue was a-head of the Victory when the ſignal for the line was made, but inſtead of remaining there, and repeating the ſignal for collecting the ſhips of his diviſion, he paſſed the Victory on the ſtarboard tack, in direct diſobedience to the ſignal of the Admiral.

Where was the French fleet at this time ?—They were right a-head of the Victory.

As the two fleets were then ſituated, was the ſignal appointed by the 31ſt article of the fighting inſtructions applicable to the purpoſe of directing the Vice-Admiral of the Red to lead on the larboard tack ?—Certainly it was not ; for it has a direct and determined ſignification, and can be applicable to no other ſituation.

When I was on the larhoard tack, did you ſee the French fleet in diſorder ?—No, I ſaw them in no other diſorder than what aroſe from their change of poſition.

Had I, at any time, while on the lar oard tack, a ſufficient force with me, to enable me to go down to the enemy ?—As I have ſaid before, there was not one ſhip a-head of you, and not more than four in their ſtations a-ſtern of you.

Was the ſignal for collecting the ſhips flying all the time I was on the larboard tack ?—It was hoiſted very ſoon after we got upon the larboard tack, and continued flying all the afternoon.

Under theſe circumſtances, did I not do the utmoſt in my power *take*, to *ſink*, *burn*, and *deſtroy* the French fleet ?—I think you did.

I am charged with having wore at this time, and ſtanding from the enemy, leading the whole fleet directly away ; I deſire you will explain all that you know of that circumſtance ?—The French fleet beginning to form on the ſtarboard tack, you diſpatched Captain Sutton,

Sutton, with orders to Sir Robert Harland to form a line in the van; but before Captain Sutton got off, the French fleet edged away, and pointed towards four or five diſabled ſhips in the leeward, on which you ordered the ſignal for wearing, ſaying to me, "Don't you ſee "them make for thoſe diſabled ſhips, I muſt not receive an affront "there; I muſt go and ſuccour them, which you did."

Was the ſignal for the line ſtill kept flying?—It was.

What ſail did I carry at this time?—Double-reefed top-ſails and fore-ſails; we were juſt beginning to haul out our main-ſail, as we were to go down and ſuccour theſe ſhips.

Do you recollect my ordering the Milford to Sir Robert Harland, to quit the rear, and form a-head, and at what time?—Sir William Burnaby was ordered at five o'clock to go to Sir Robert Harland, to reſume his ſtation in the van.

Do you recollect my ſending the Fox to the Vice-Admiral of the Blue at the ſame time?——I do.

What were the orders that were ſent to the Vice-Admiral?—Capt. Windſor was directed to inform the Vice-Admiral to come down with all expedition into the Admiral's wake, as the Admiral only waited for his diviſion to renew the engagement.

Do you know what the words were?—Yes; I told him myſelf to tell the Vice-Admiral we had long waited for him.

Do you recollect my ſpeaking to him from the ſtern gallery?——Yes; but I cannot be preciſe as to the words.

Where was the Vice-Admiral of the Blue at this time?——Wide upon our weather-quarter.

After being on the ſtarboard tack, did I not the whole afternoon expreſs my uneaſineſs and ſurprize at the Vice-Admiral's continuing to windward, without making any effort to come down in obedience to ſignals?—You frequently did; and I remember upon one occaſion expreſſing my apprehenſion that the Vice-Admiral was wounded, as I could not conceive that the Formidable would behave ſo if he was well.

Did I not expreſs to you often my intention of re-attacking when he ſhould come down?—Yes.

Did I ever ſeem to have given up my intention of re-attacking that day till night came on?—No.

Do you recollect what ſail I ordered to be carried, for regulating our courſe in the night?—At eight o'clock we made tack in the third reef of our mizen-top-ſail, that we might not obſtruct the view of the ſhips a-head; and we went under double-reefed top-ſails all night.

Admiral Keppel. May I beg the indulgence of the Court to have the Robuſte's log-book read, reſpecting the alteration, or rather the addition of the words, "the Admiral making much ſail" all the night. After Admiral Campbell's defence, Mr. Keppel obſerved there required no comment on that addition.

You

You have heard the 5th article read, wherein I am charged with not having purſued the French fleet in the morning of the 28th. I deſire you to inform the Court all that you know of this particular? —In the morning of the 28th, the French fleet were not ſeen. There were three ſail ſeen at a conſiderable diſtance from our ſtern-moſt ſhips, and ſignals were made for the Prince George, the Elizabeth, the Bienfaiſant, and the Duke (whoſe ſignal was made, becauſe ſhe had ſuffered leaſt in the action). But the Prince George and the Elizabeth made ſignals that they could not chace, ſo that the three ſail having got greatly the ſtart of us, before it was aſcertained that they were French, the chacing ſhips were called in, and the ſignal made to ſet up rigging.

In the ſituation the fleet was then in, was there any probability of our coming up with the fleet, if I had purſued to eaſtward before they had reached the port of Breſt?—I think there was none. The purſuing with a fleet in the ſituation they were in, would have certainly ſeparated them, as the diſabled ſhips muſt have fallen a-ſtern. What I mean by diſabled ſhips is, diſabled in their ſails and rigging, ſo that they could not carry chacing ſail.

One thing I had forgot; I muſt beg leave to aſk Admiral Campbell now, when I was upon the ſtarboard tack, under the degree of ſail you have deſcribed, did it carry the moſt diſtant appearance of a flight?—It did not.

Did you ſee the Vice-Admiral of the Blue repeat the ſignal for the line, on any part of the afternoon, or evening of the 27th?—No. And I think it would have been very improper and un-officer-like, to have repeated the ſignal without obeying it.

You have heard all the articles of the charge read, I therefore deſire you to ſtate to the Court any inſtance of negligence or miſconduct, that you ſaw or know that I committed on the 27th or 28th of July?—I never ſaw any negligence, either then or at any other time, and I never ſerved under any Admiral, who was more diligent in the execution of his duty than the Admiral was.

Did I not give orders to reverſe the line of battle, if I ſhould find a neceſſity or an advantage in doing ſo?—Yes, you did.

Did I not add to the fighting inſtructions this addition after we were at ſea: "The flag of the Admiral is always to be conſidered as the centre part of obſervation in forming the line.?"—Yes.

Preſident. What time did the Vice-Admiral of the Blue get into his ſtation in the evening of the 27th?——Not while there was any light to renew the engagement.

Did you ſee the Vice of the Blue's diſtinguiſhing lights in the night-time?——I did not ſee him till morning.

What diſtance was he the next morning from the centre?—I did not take notice.

Croſs-Examination by Sir Hugh Palliſer.

When the Admiral was ſtanding towards the French, Admiral Campbell has ſtated that the Formidable was the only ſhip a-head of

 him;

him ; I aſk you if the Formidable was not within gun-ſhot of the enemy till the ſignal for battle was hauled down, and the Victory had ſhortened ſail ?——I never ſaw the Formidable on the larboard tack, nor did I ever hear that ſhe was ſo till the Vice-Admiral told me ſo himſelf.

When was the time you ſaw her a-head ?—A little before the two ſhips met, when the Victory was on the larboard tack, and the Formidable on the ſtarboard.

Then, Sir, as the Formidable was on the ſtarboard, was it poſſible to ſee whether ſhe had the ſignal for the line out or not, on board the Victory ?—The Victory was not the ſhip that the Vice-Admiral was to look at for the ſignal. When the gun was fired he ought to have obſerved the repeating frigate.

Was not Captain Marſhall, of the repeating frigate, on board the Victory when the Formidable paſſed her ?—He was on board when ſhe wore to bear down, a quarter of an hour after the Formidable had, but I do not think he was on board then.

Whilſt he was on board, was not his frigate near to the Victory, in readineſs to take up the Captain's boat, to ſteer him, as he was commanded ?—I do not recollect ; it might be ſo.

That being the caſe, was not the ſignal on board the repeating frigate equally inviſible to the Formidable, as that on board the Victory? —The ſignal had been made on board the frigate long before the Captain came on board the Victory.

If you do not know whether the ſignal for wearing was out or not, when the Formidable and the Victory met, I aſk you, whether you are not very precipitate in charging me with direct diſobedience of orders in ſtanding on that tack ?—No, I am not ; for the ſignal for wearing was not made for full three quarters of an hour after the ſignal for the line was out ; but even if it had been ſo, he acted in direct diſobedience of orders, by wearing before the Admiral wore.

What, if I had not ſeen the ſignal for the line ?—I never meant to reproach nor charge any man with diſobedience of a ſignal he never ſaw. It was the Formidable's duty to have ſeen that ſignal ; and I think ſhe muſt have ſeen it, if ſhe had properly looked out for it.

Is it poſſible for one ſhip to ſee the ſignal of another end on ?—— When two ſhips carry the ſame ſignal, who are at a little diſtance from each other, I do not think it is poſſible for another ſhip to be in ſuch a ſituation, as not to ſee it on one of the two ſhips. And I am ſenſible if the Formidable did not ſee it, ſhe was the only ſhip in the fleet that did not.

Admiral Arbuthnot. Did the Formidable paſs you in ſuch a ſituation as to enable you to have ſeen the ſignal, if it had been flying? —I ſaw the whole of her, and the ſignal was not flying.

Sir Hugh Palliſer. Did you not ſee it hoiſted ſoon after ?—I did not ſee it at any part of the day ; I ſaw her hoiſt a blue flag at the mi-

zen-

zen-peak, a ſignal for the ſhips to come into the line, but I never ſaw her hoiſt the ſignal for the line of battle.

At the time the blue flag was hoiſted on board the Victory, which you ſay the Formidable repeated, was it not within half an hour after the ſignal for wearing?——To the beſt of my remembrance it was not till an hour after we had wore.

But ſuppoſing it had been no more than half an hour, how far would the Formidable have been diſtant?—That is a queſtion of ſuppoſition that I cannot anſwer, ſince it muſt be owing to the rate and courſe of ſailing.

Why did the Admiral order the Vice-Admiral of the Red to take the ſtation in the rear, juſt after the Blue diviſion came out of action?—Becauſe the Blue diviſion and part of the centre had bore on, and were not in condition to have taken that ſtation; but when the Admiral ordered Sir Robert Harland to his own ſtation a-head, they appeared in condition to have fallen down, or, at leaſt, a greateſt part of them.

Is it noted on board the Victory, the hour and minute, that the meſſage was delivered to the Fox?—I have always underſtood that it was, and I have one minute myſelf where it was noted.

Was the Admiral waiting for my coming down, or did he not continue ſail as before?—We continued under the ſame eaſy ſail as before.

Was it not known on board the Victory before twelve o'clock that night, that the French fleet had bore away?—No; it was not known till day-light, and was then a matter of ſurprize to every body.

Were any frigates ſtationed between the two fleets in the night-time, to obſerve the motions of the enemy?—No; but if any had been, and the Admiral had known of their running away at the time, I know not any one ſtep that he could have taken to prevent it. His ſignals had been ſo ill-obeyed by the Vice-Admiral of the Blue during the day, that I think he durſt not have made a ſignal to chace, nor have riſqued an engagement, after the damp that diſobedience had given to the whole fleet.

Was not the Duke one of the moſt ſlow ſailing ſhips in the fleet?—The Admiral had very good reaſons for believing that the Duke was the leaſt crippled of any ſhip in the fleet. [Withdrew.]

Capt. MARSHALL, of the Arethuſa frigate, was again called.

Admiral Keppel. Did you ſee the ſignal for the line flying on board the Victory after the action, while ſtanding on the larboard tack?—I have ſaid that it appeared ſo by my minutes, and that I repeated it.

Did you keep it aboard repeated all the time I ſtood ſo on the larboard tack?—I think ſo.

Did you ſee the Formidable while the Victory was on the larboard tack?—Yes.

How was the Arethuſa ſituated with reſpect to her?—On her weather-quarter.

Sir Hugh Palliſer. When and by whom did you receive notice to attend the Court?——I was given to underſtand that I ſhould be wanted.

Admiral Keppel. I ſhall be glad to know if the proſecutor admits the letter in the Morning-Poſt, ſigned "Hugh Palliſer," to be his, or if I muſt put it to proof.

Sir Hugh Palliſer. I admit it to be mine.

Captain FAULKNER, of the Victory.

Admiral Keppel. What would have been the conſequence if I had formed the line of battle, inſtead of cloſing with the French on the 27th of July?—That they could not have been brought to action at all.

With what part of the French fleet did the Victory begin action?—Several of the French ſhips fired upon us, but we reſerved our fire for their Admiral.

Were your men in good order, ſober, and obedient on that day?—Entirely ſo.

Was the French fleet in a regular line?——They were not in a regular order, but in that ſailing order which approaches neareſt to a line.

Where there not two French Admirals near one another?—There was only one ſhip between the Bretagne and another flag ſhip.

Did the van keep their wind as they paſſed?—As much as poſſible.

Did they paſs out of gun ſhot?—The 4th or 5th ſhip a-head of the Bretagne fired on the Bretagne, and her fire hardly reached her. The ſhips a-head of thoſe ſhips were ſtill further off.

I am charged with ſtanding to a great diſtance beyond the enemy, before I wore to ſtand towards the enemy again. I deſire you to inform the Court, whether it was practicable for me to wear ſooner, and when I did wear, whether any ſhip wore with me?—The Victory was wore as ſoon as it was practicable, and ſooner than any other ſhip.

By the deſire of the Preſident, he gave an account of the principal damages of the Victory. She had one large ſhot through her main-maſt, another ſhot in the main-yard, the mizens were ſhot thro', the bowſprit was ſhot through, the mizen-yard ſhot in her lower arm, ſo as to make it neceſſary to cut it off; the gib-beam ſhot about three feet below the head, the main-top-ſail-yard was ſhot, two of her lower deck parts were very much broke, the ſtarboard fore-tack-ſheet and bowling ſhot away, the fore-top-maſt ſtay-ſail, a part of the bowſprit, ſix fore-ſhrouds, the fore-top-maſt ſheet, ſeven main-ſhrouds, five main-top-maſt ſhrouds, four mizen-ſhrouds, and all the running rigging, very much ſcattered, &c.

Have you any reaſon to believe, from any thing you ſaw, that the Vice-Admiral of the Blue was at any time expected to be cut off?—No.

Do you recollect when the ſignal for battle was hauled down?—It was while the Victory was on the ſtarboard tack that I gave orders for it to be ſo, having received them from Admiral Campbell.

Was

Was the ſignal made for the line after the Victory got upon the larboard tack?——Directly.

Was it kept flying till ſhe got upon the ſtarboard tack again?—It was.

Were any ſhips got into their ſtations before the Victory wore back again?—The ſhips that ſhould have led the Victory were not in their ſtations.

Had I ſhips enough with me to admit of my advancing faſter than I did?—No.

I am charged with having ſhortened ſail, had I ſhips enough with me to advance ſwifter?——No.

Did not the main-top-ſail, being unbent, enable the ſhips a-ſtern of us better to follow us, and was it not unfit for ſervice?—Yes, it did enable the ſhips a-ſtern of us better to follow us, and was unfit for ſervice.

Was its being ſo a public detriment at that moment?—It was not certainly, but a benefit for the previous reaſon.

Had any ſhip of my own, or the Blue diviſion, an opportunity with that ſail unbent, to get a-head of the Victory before we were to the ſouthward again?—As none did, I ſuppoſe none had it in their power, I imagine they would have obeyed the ſignal, if poſſible.

Did your people ſoon replace that main-top-ſail ſo unbent, and in a ſeaman-like manner?—It was done in little more than half an hour.

After it was ſo, did not you, and all the officers, notwithſtanding the defects you have ſpoken of, think the Victory fit for action?——By the time it was replaced the rigging was repaired for action, the magazine for powder repleniſhed, and ſhe was as fit for action as poſſible.

Did you ſee the French fleet wear?—No.

Had I then force enough to prevent their forming?——No.

When did I wear to the ſouthward?——Half paſt three.

Did I keep the ſignal for a line of battle flying after being on the ſtarboard tack, to collect and form?——It was not hauled down.

What ſail did I carry on the ſtarboard tack?—After the main-top ſail was bent, double reefed top-ſails, fore-ſails, and mizen-ſtay jacks.

Do you recollect Sir Robert Harland's coming into the rear while on the ſtarboard tack?—Yes, I do.

Do you recollect my ordering him to lead the rear and form a-head, and by what ſhip?—I hailed the Milford by your order to go with your commands for that purpoſe to Sir Robert Harland.

Do you recollect my orders at that time to the Fox, to go to the Vice of the Blue?—I recollect her being hailed by ſome perſon from the ſtern-gallery. The meſſage I did not hear, but perceived her ſail to windward, with a preſs of ſail. We underſtood ſhe was ſent to the Vice of the Blue, to order him to come down. [Here he was ſtopped, as what he was delivering was only from hearſay.]

Where

Where was the Vice of the Blue then?—From two to three points abaft the Victory's weather-beam, about two miles to windward, as near as I can undertake to say.

TWENTY-FOURTH DAY, WEDNESDAY, *February* 3.

AT ten o'clock the Court was resumed when Capt. FAULKNER, of the Victory, was again called.

Admiral Keppel. Did you observe the Formidable's main-top-sail unbent?—Yes, for four hours.

Had she any other damages that you saw?—She had all her masts and yards standing.

Did it ever appear in the course of the afternoon that I had given over the intention of re-attacking?—Quite otherwise.

Did you see any efforts made on board the Formidable, to obey the signal after the Fox went to her?—I neither saw any efforts made before or after the Fox went to her.

Did you see the Formidable repeat the signal for forming the line while the Victory was on the larboard tack?—I did not. I saw the Arethusa frigate repeat it, and she even on the Formidable's lee-bow, very near her.

In the evening of the 27th, what sail did I establish for the night? Two double-reefed top-sails, fore-sail, mizen, mizen-stay-sail, and mizen-top-sail, all reefed.

Were the distinguishing lights kept burning all night?—I gave orders that every socket in the lamps should have a candle in it. Added to the common lights of the Commander in Chief, we carried a very good light at the bowsprit end.

Was there any increase of sail during the whole night?—None; no alteration.

Did you see the French fleet bear away and go off in the night?—No. There were some rockets thrown between ten and eleven; and then I came out to the gallery, and saw the French fleet in the same position as before. I was on the quarter-deck four or five times in the middle watch, and still saw lights in different places to leeward.

In the morning of the 28th, what part of the French fleet were seen?—I saw no more than three sail; the northern-most of which I took to be a line of battle ship; the southern-most a large frigate; and the middle-most a small frigate.

Did I send any ships to chace them?——The signal was made for the Prince George, Bienfaisant, and the Elizabeth, to chace to the north-east.

Was it not soon afterwards discovered, that the Prince George and Elizabeth were too much crippled for chacing?—They hailed the Victory, and accounted to the Admiral for their not carrying more sail.

If

If I had purſued the French with all my fleet in the condition we then were, was there any probability of our coming up with them before they reached Breſt, the wind and weather as it then was?——Not the ſmalleſt; if there had, I am ſure the Admiral would have done it.

How many ſhips were there made ſignals for ſetting up rigging?—I did not count them; but there muſt have been 12 or 15 at leaſt.

You have heard all the articles of the charge read; I deſire you to ſtate any inſtance, if you ſaw, or knew of any, wherein I negligently performed my duty on the 27th and 28th of July?—I cannot ſtate any inſtances to this Court, wherein the Admiral did not conduct himſelf like a brave and an able ſea-officer.

You were ſent with my diſpatches to the Admiralty?—I was.

Had you not a meſſage from me to Lord Sandwich?—I had; and I beg leave to read it. "Give my compliments to Lord Sandwich, "and tell him, I have more to ſay to him than I think is proper to "put in my public letter; and, if it is his Lordſhip's pleaſure to aſk "me any queſtions, I am ready to wait on him."

Withdrew.

CAPTAIN STONEY, late Firſt Lieutenant of the Victory.

Admiral Keppel. Had you the morning watch on the 27th of July?—I had.

Do you recollect the ſignal being made for ſeveral ſhips of the Blue diviſion to chace to windward?—I do.

Do you recollect how the Vice-Admiral of the Blue bore at that time, with reſpect to the Victory?—About a point, or a point and an half, before the lee-beam, and about four miles diſtant.

What watch had you in the evening of the 27th?—The firſt.

What ſail was the Victory under during your watch?—Fore-ſail, double-reefed fore and main-top-ſails, the middle ſheet was hauled off, ſhe ſcarcely ſteered before for want of ſail abaft.

Did your top and other diſtinguiſhing lights burn well?—They did, the lanthorns being frequently wiped and cleaned for the purpoſe.

Did you ſee any rockets thrown by the French fleet into the air?—I did, nearly at eleven.

Did you not ſee ſeveral lights to leeward after that?——I did; I ſaw ſome flaſhes which I took for ſquibs alſo.———Withdrew.

LIEUTENANT CALDER, of the Victory.

Admiral Keppel. Do you remember a meſſage being ſent by the Fox, to the Vice-Admiral of the Blue on the 27th of July?—I do.

Can you recollect what time of the day it was?—From the height of the ſun, I ſhould ſuppoſe it to be between four and five.

Were the people at your quarters all in obedience, and alert?—They were. [Withdrew.]

The

The Hon. Capt. BERKELEY, late Lieutenant of the Victory.

Admiral Keppel. Do you remember the time of the day when the Fox was ſent to the Formidable?—I came upon deck and aſked the Quarter-Maſter what o'clock it was, he told me it was after one bell, or five o'clock. I then was ſhewn the Fox ſtanding to windward to the Formidable, with a meſſage from the Admiral.

What watch had you in the night of the 27th?—The middle.

Did you ſee the lights of the French fleet during your watch?—The officer that I relieved ſhewed me the French lights about three points abaft the beam; I kept my eye upon them the whole night, but when day light broke, I only perceived two ſhips where the lights had appeared, and a third ſhip a-ſtern of them.

What ſail did the Victory carry during your watch?——Double-reefed fore and main-top-ſails, fore-ſail and mizen. She carried her helm a-lee almoſt the whole watch.

Were the diſtinguiſhing lights kept burning all night?——They were particularly ſo; there were more lights added that night than had been on any night before. I went myſelf often to ſee that the ſtern lights were kept in proper order.

Were the people in good order at your quarters, ſober, obedient, and alert, through the whole day?—They were, Sir, particularly ſo; more ſo than I have ſeen in any ſhip I have before ſailed in.

Withdrew.

Sir JACOB WHEAT, Lieutenant of the Victory.

Admiral Keppel. Do you remember my ſending the Fox to the Vice-Admiral of the Blue?—I remember it perfectly well; I ſtood by the Admiral on the ſtarboard ſide, when he ordered the frigate to go and acquaint the Vice-Admiral, that he only waited for him and his diviſion to come down into his wake to renew the action.

What time was that?——I cannot ſpeak to minutes, but it was about five o'clock.

Were not the people under your command in good order, ſober, and obedient, and did they not behave to your ſatisfaction?—Perfectly ſo. [Withdrew.]

Capt. Sir JOHN LINDSAY, of the Prince George, was carried into Court, and ſat during his examination.

Admiral Keppel. From my firſt ſeeing the French fleet, to the moment I brought them to action, did they ſhew an uniform intention of coming to action, or did they avoid it?—On the cloſe of the evening of the 23d, they had got about twelve ſhips formed, then ſtood to leeward, and next morning they were ſeen to windward; the Admiral made the ſignal for a general chace, and if they had had any intention of coming to action, they would not have ſuffered two of their beſt ſhips to have been ſeparated; and after that they carried a preſſed ſail, and did all they could to avoid us.

Did

Did I do the utmoſt in my power as an officer to bring them to action on thoſe days?—The Admiral carried as much ſail as the fleet in a collected body would admit of; and if he had continued in a line of battle, they would have, in a very ſhort time, got out of ſight of us by their ſuperiority of ſailing.

If you had commanded a Britiſh fleet in the ſituation the French fleet were in, would you have heſitated a moment in coming down to action on either of thoſe days?—I think an officer who would have heſitated one moment, would have been unworthy any command in in the Britiſh fleet.

When the ſignal was made for the leeward ſhips to chace, was there any greater indication of the French fleet intending to come to action than on the preceding day?——There was not.

What in your judgment was the object of the ſignal for chacing, and do you think it was a proper one, under the circumſtances in which it was made?—It was with the intention of bringing up the leeward ſhips to cloſe with the center; and I apprehend, if it had not been made, a great part of that diviſion would not have come into action at all.

What in your opinion would have been the conſequence, if I had formed the line in the morning, inſtead of bringing up the leeward ſhips to chace to ſignal?—As the French fleet conſtantly avoided us, it muſt have given them the power of eſcaping entirely, and I am clearly of opinion, that we ſhould not have exchanged a ſhot with them that day.

Was not your getting within reach of the enemy very ſudden and unexpected, from the ſhift of wind?—After we got upon the ſtarboard tack, the wind changed two points, which enabled us to lay up for them; and it occurred to me, they had tacked their whole fleet together; their rear was obliged to bear down to get into the wake of their van; it was ſo unexpectedly that I had but juſt got my long-boat cut away from the ſide before the enemy fired upon me.

What would have been the conſequence if I had formed the line of battle at this time?—It would have thrown the fleet into ſuch confuſion, that if the enemy had bore down to the attack, it might have been attended with very fatal conſequences.

As I was charged with having advanced to the enemy, and made the ſignal for battle without forming the line; I deſire you will inform the Court if you think I was juſtifiable in ſo doing, under the circumſtances I then was?—There was no alternative. You muſt either advance and attack the enemy without forming the line, or not attack them at all; to me it was a very animating ſight; it appeared bold, daring, and manly, and becoming the character of a Britiſh ſeaman, who felt his ſuperiority over an enemy that he had before beaten. The ſucceſs juſtified the meaſure, and threw the enemy into ſuch confuſion, that I found two Admirals ſhips cloſe to each other, which could not have been their ſituation in the line, and fired over three ſhips that were a-breaſt of each other.

Did I make the ſignal for line of battle as ſoon as I had wore, after paſſing the rear of the enemy?— As ſoon as the Victory got upon the ſtarboard tack.

I am charged with having ſtood to a great diſtance beyond the enemy before I wore; I deſire to know of you, who muſt know, as you were the firſt ſhip that wore after me, if the fact be true?—The Victory wore before any other ſhip was ready to follow her; I was obliged to paſs and wear under her ſtern. It appeared to me to have been done with great expedition.

Was the ſignal for the line of battle the propereſt ſignal I could make to collect the fleet together?—I know of no ſignal ſo proper, and which every officer piques himſelf on paying ſo prompt an obedience to.

I am charged with ſhortening ſail when advancing towards the enemy; I deſire to know if I had a ſufficient force collected to admit of my advancing further than I did?—There were only three or four ſhips near the Victory. The Vice-Admiral of the Red was advancing, but not with a ſufficient force to enable him to re-attack the enemy.

Did you ſee the French fleet near, and begin to form their line on the ſtarboard tack?—I did.

Had I a ſufficient force collected to prevent their forming?—If the Red diviſion had advanced, they might have ſuffered a great deal before the others could have come up to ſupport them. It would therefore have been highly improper to have attempted it.

I am charged with wearing at this time, and ſtanding directly from the enemy. I deſire you will explain this manœuvre to the Court?—The French, when they firſt drew out their line, ſtood towards the centre, but the Vice-Admiral of the Red, placing himſelf between the Admiral and them, forced them to relinquiſh their deſign. They then bore down to cut off ſome of our diſabled ſhips to leeward. The Admiral then wore, and ſtood under an eaſy ſail to protect thoſe ſhips.

Did I make every neceſſary ſignal to form the line, and collect the fleet on the ſtarboard tack?—Every ſignal, I think, that could be made on the occaſion.

What ſail did I carry?—Top-ſails; the fore-ſail I am not certain of; the Prince George had only her top-ſails.

Was not the ſail I carried neceſſary for the protection of the diſabled ſhips; and could the ſail I carried poſſibly prevent the Vice-Admiral of the Blue from coming into the line?—If the Victory had carried leſs ſail, it would have been difficult for the other ſhips to have been kept in the line; and it did not appear it could prevent any ſhip from getting into her ſtation.

Admiral Montague. You have ſaid that the Prince George had only her top-ſails ſet; were they reefed?—They were double-reefed, and the fore-top-ſail was not ſet.

Did

Did not the eaſy ſail I carried permit the French fleet to range up with me?—It did.

Had this manœuvre, as you have ſtated it, the leaſt appearance of a flight?—Not the leaſt.

Could not the French fleet have attacked the Britiſh at any time they thought proper?—It was in their power to do ſo all the afternoon.

At what diſtance was the Vice-Admiral of the Blue from his ſtation, and how did he bear from you?—At that time I was not in my ſtation, having placed myſelf a-head of the Victory, expecting an inverted line would have been formed. On the Vice-Admiral of the Red's going a-head, my ſignal, as well as the Bienfaiſant's, were made to reſume our ſtation. After I had got a-ſtern, I obſerved the Vice-Admiral of the Blue about two miles to windward, and point abaft our weather-beam.

What courſe muſt the Vice-Admiral of the Blue have ſteered to have got into his ſtation?—Nearly afore the wind.

Did any thing appear to you to prevent his coming down?—He had then his fore-top-ſail unbent; and it appeared to me he could have made more ſail.

Did he make any viſible effort that you ſaw to come into the line?—I ſaw none.

What time was his fore-top-ſail unbent?—About have paſt three, and continued ſo till ſun-ſet.

Did you ſee him repeat the ſignal for the line of battle?—No.

Can you aſſign any reaſon why the French fleet were not attacked that afternoon?—I ſuppoſe if the Vice-Admiral of the Blue had led down his diviſion into the line of battle, the French fleet would have been re-attacked.

You think, then, I ſhould have renewed the attack, if the Vice-Admiral of the Blue had come down?—I certainly do.

You have heard the fifth article of the charge, wherein I am charged with not having purſued the French fleet. I deſire you to ſtate to the Court all that you know of that ſail?—The Prince George's ſignal, the Elizabeth's, Bienfaiſant's, and Duke's, were made to chace. The Prince George was ſo much ſhattered in her maſts, ſhe was not able to make ſail; the ſignal was therefore made to call her in, the whole fleet appearing ſo much crippled, that the chace could not have been continued with any probability of ſucceſs; nor was there the leaſt probability that they would have got up with the French before they reached Breſt harbour; at the ſame time it might have been attended with great danger, to have brought the fleet upon a lee-ſhore, in this crippled ſituation.

Sir John, your ſtation being near to me, and which you preſerved all the time that we were in purſuit of, and engaged with, the French fleet, it gave you an opportunity of ſeeing objects in the ſame kind of view with myſelf; I therefore deſire you to ſtate to the Court any

inſtance wherein I negligently performed my duty on the 27th or 28th of July?—I can ſtate no ſuch inſtance, becauſe the Admiral fulfilled his duty in every reſpect. I had the honour of ſerving under his command laſt war, and had ſuch ſtrong proof of his bravery, knowledge, and ability, as pointed him out to me as one of the greateſt ſea-officers this country has ever produced; and the whole of his conduct in his late command, has ſerved to confirm me in that opinion.

Croſs-Examination by Sir Hugh Palliſer.

I aſk you whether, if thoſe ſhips, whoſe ſignals had been made to chace, had been permitted to remain with their Admiral, they would not have gone into action with their Admiral, have ſupported each other, and have done more ſignal ſervice?—Several of the ſhips whoſe ſignals were made, were to leeward of the Vice-Admiral, therefore if the ſignal had not been made, they would not have taken the advantage of change of wind, and therefore they could not have come into action.

Do you think that at the diſtance you were at, you can judge better of the ſituation of thoſe ſhips than the Captains of the diviſion themſelves?——I certainly cannot.

The Vice-Admiral aſked him a variety of queſtions, which ſerved to prove, that it would have been highly improper for the Admiral to have wore ſooner than he did, had it been even practicable, ſince it would have been attended with great confuſion, as even in a fleet not at all diſabled in their maſts and rigging, it is very dangerous, when they get into confuſion, to keep them from running aboard of each other. If the ſhips that remained in action had wore, they muſt have been raked by the enemy in the operation of wearing. Among the many curious queſtions that the proſecutor aſked, the following was one:

If you had been coming along the French line, and had obſerved the ſhips that had paſſed a-head of you wear, and renew the attack with the enemy's rear, would you not have run the hazard of being raked in wearing to have got upon the other tack?—After ſome explanations, the honourable Baronet declared he underſtood the queſtion, but he could not conceive that ſuch a caſe could exiſt. For no officer could think of wearing and re-attacking the enemy, while a part of his own fleet was ſtanding on the oppoſite tack, ſtill engaged with the enemy. But, continues he, if ſuch a caſe ſhould ariſe, I certainly would undergo the hazard, for the ſake of continuing the engagement.

If the ſhip that was moſt cut in her rigging, and had all her bracings and bowlings but one cut, could wear immediately after coming out of action, could not any other ſhip do ſo?—I ſuppoſe one man can do as much as another.

Did not the ſhips of the Blue diviſion ſuffer more than any other equal number of ſhips in the fleet?—I can only ſpeak from my own obſervation, and they did not appear to me to have ſuffered more than the other ſhips; I believe the Prince George ſuffered as much or more than any other ſhip in the fleet.

Could the ſhips that came lateſt out of action, and had received more damage, be expected to come as ſoon into the line as the others? —Not if they had received more damage than the reſt.

Did the Admiral intend to renew the engagement at ſeven or eight o'clock in the evening, at the riſk of a night engagement, and preferring the ſhips that came laſt out of action, and were the moſt diſabled?—I certainly thought the Admiral intended to renew the engagement, when I got a-ſtern of him in the afternoon, but I cannot ſay that he intended to do ſo at eight o'clock at night. I ſhould think he would not then have hazarded an engagement.

The Honourable CAPTAIN WINDSOR, of the Fox.

Admiral Keppel. When you received orders from me to go to the Formidable, was the Fox obliged to get on the contrary tack, and could you fetch the Formidable?—She was obliged to go on the other tack, and could not fetch the Formidable.

Did the Fox carry much ſail?—Fore-ſails, top-gallant-ſails, main-top-maſt ſtay-ſails, &c.

Did the Formidable return you any cheers after you, as you have ſaid before, returned her cheer?—I think ſhe did.

What part of the ſhip was the laſt cheer you received given from? —I think the forecaſtle.

Sir Hugh Palliſer. What part of the ſhip was the firſt cheer given from?—The main and mizen ſhrouds. [Withdrew.]

LIEUTENANT BERTIE, of the Fox, was next called.

Do you remember the Fox being called to the Victory on the afternoon of the 27th?—I do.

Do you remember the meſſage given to Capt. Windſor?—I do.

What was it?—The Admiral directed Captain Windſor to go to Sir Hugh Palliſer, and let him know it was his orders that Sir Hugh Palliſer ſhould come down into the Victory's wake, and that the Admiral only waited for him and his diviſion to renew the attack.

What time was it?—Between five and ſix, I think.

Was the meſſage delivered to Sir Hugh Palliſer correctly?—Capt. Windſor delivered it twice himſelf; not contented with that, he ordered me to take the trumpet, which I did, and repeated it twice more; the anſwer each time was from the ſtern gallery, "Sir, I underſtand you perfectly."

Was the meſſage you delivered the ſame as I gave you?—Word for word, I believe.

Standing from the Victory, were you able to fetch the Formidable?——No, ſhe was too far on the weather-quarter, we were obliged to tack.

Had you much ſail?—A preſs of ſail; the top-gallant ſails were out, &c.

How

How faſt did you ſail?—I ſhould ſuppoſe from ſix to eight knots.

How long was you going?—I think about half an hour.

Preſident. Whoſe voice did you think it was you heard from the ſtern-gallery?——I fancy Sir Hugh Palliſer's.

Did you, after having your anſwer, obſerve any different manœuvres on board the Formidable?—She manned ſhip to cheer us.

Any alteration in her ſail?—I don't recollect.

Was ſhe then under ſail?—I think her fore-ſail was up, &c.

Admiral Keppel. By five or ſix, do you mean the hour when the Fox received or delivered my meſſage?—When the Fox received it.

Mr. COURTNEY, a youth, midſhipman of the Fox, called.

Court. How old are you?—Between 16 and 17.

Did you ever take an oath?—No.

Admitted as a witneſs.

Admiral Keppel. Had you not the charge of a prize to carry into port, taken by the Fox?—Yes.

Was you on board the Fox during the action on the 27th?—Yes.

Do you remember being hailed by the Victory on the 27th in the afternoon?——Yes.

At what time?—Between five and ſix.

What meſſage was given you to take to Sir Hugh?—To go under the Victory's ſtern, and tell him, that the Admiral only waited for him, and the ſhips of his diviſion, to come down into his wake to renew the action.

Was that meſſage delivered exactly to Sir Hugh Palliſer?—Yes.

Do you know whether there was an anſwer?—Yes, but I do not recollect the words.

[Admiral Keppel here deſired Sir Hugh's letter, publiſhed in the Morning-Poſt, and acknowledged by Sir Hugh, might be read. Sir Hugh Palliſer objected to it, ſaying, he was ready to anſwer to the Admiral for that in another place. Admiral Keppel, in a tone which ſhewed his contempt of Sir Hugh Palliſer, anſwered, he never would call on him privately, and that he believed the deciſion of the Court would furniſh him with the beſt anſwer poſſible to that publication. The Court interpoſed, and put an end to the altercation.]

CAPTAIN MAITLAND, of the Elizabeth, declared generally, that on the 24th, 25th, and 26th of July, the French did every thing to avoid, and the Britiſh Admiral every thing to bring on, an action, and that if he had commanded the Britiſh fleet, he ſhould not have heſitated to attack the French as the Admiral did.

Admiral Keppel. How near when you began to fire was you to the Formidable?—In the latter part of the action within two or three cables length of her. There were two or three other ſhips a-ſtern

of

of her. I cannot, from my other engagements, aſcertain the preciſe diſtance.

Were the ſhips in the rear near enough to ſuccour you?——We found no inconvenience from the want of ſuccour. They could not be far a-ſtern of us.

Did you paſs the enemy's van before or after the Formidable?—At a quarter paſt one we were cloſe on the Formidable. One of our midſhipmen called out a ſhip was coming on board us, when the ſmoke cleared. It was the Formidable. She was then engaged. I was obliged to ſhoot before her, or muſt have fired through her to annoy her.

Did it ever appear to you ſhe was in danger of being cut off?——I did not think the Vice of the Blue ever was in any ſuch danger.

Did you ſee the French make up to five ſhips that were to leeward ſeemingly repairing damages?——Yes.

While the Britiſh and French fleets were on the ſame tack on the afternoon of the 27th, had it on the part of the Engliſh an appearance of flight?—No, very contrary.

For this opinion he gave variety of reaſons, which ſhewed him to be an attentive and able ſeaman. He afterwards depoſed, that the French ſtole away in the night; and that with the ſhips of the Britiſh fleet, they could not, in his opinion, have been overtaken the next morning, (if purſued as ſoon as they were ſeen) before they would have reached the port of Breſt.

Admiral Keppel. Did you obſerve or know of any thing in my conduct as Commander of the Britiſh fleet, which indicated a neglect of my duty?—I did not; but, on the contrary, thought you did every thing in your power as a gallant officer to ſerve your country.

TWENTY-FIFTH DAY, THURSDAY, *February* 4.

CAPTAIN LAFOREY, of the Ocean, was called by the Admiral.

Admiral Keppel. When was the French fleet firſt ſeen?—The 23d of July.

Did the Admiral uſe every means, as an officer, from that time to the 27th, to bring them to action?——I think he did.

Did you judge, from the motions of the French, that they were inclined to come to action, or to avoid it?—I thought they ſtudiouſly avoided it.

If you had commanded a Britiſh fleet, in the ſituation the French then were, would you have heſitated one moment to go down to action, on account of the wind and weather, as you know it to have been then?—I ſhould not have thought myſelf juſtifiable if I had omitted any one period of that time to have borne down and attacked them.

Did

Did they ſhew any more intention of bringing on the battle on the 27th, than on the preceding days ?—They did not.

Did you ſee, on the morning of the 27th, a ſignal for ſeveral ſhips of the Vice-Admiral of the Blue's diviſion to chace to windward ?—I did.

Was the Ocean on the weather-quarter of the Formidable at that time ?——She was wide on the weather-quarter, and a great way a-ſtern.

Was it your intention to have edged down to the Formidable at the time the ſignal was made ?—I had kept quite away about a point to get nearer my diviſion, and I hauled my wind directly when the ſignal was made.

If the ſignal had not been made, would you have been able to get into action as ſoon as you did, unleſs the wind had changed two or three points to the weſtward ?—I ſhould not have got into action as it was, had not the wind ſhifted to the weſtward ; for the Formidable weathered me out of gun ſhot when ſhe changed to the ſtarboard tack.

Did not the Formidable, and the other ſhips of that diviſion, when ſignals had not been made to them, croud all their ſail to cloſe with the center, which made it needleſs to extend that order to them ?—I ſaw the Formidable do ſo.

If I had formed the line on the 27th in the morning, do you think I could have brought the French fleet to action that day ?—We could not, unleſs they had bore down to us, which they did not ſhew any diſpoſition to do.

When you got into action with the French fleet, how was your ſhip ſituated with reſpect to the Formidable ?—I brought up under the Vice-Admiral's lee-bow, I had juſt room to engage between him and the ſhip a-head of him.

When did the Ocean come out of action ?—At half paſt one.

At what diſtance was the Formidable from the Ocean when you came out of action ?—About two or three cables length.

Did the Formidable appear in danger of being cut off ?—I think not. The French fleet paſſed on the oppoſite tack, none of them ſtopped to engage him, and none of them returned to engage him.

At what time did the Victory paſs you on the larboard tack ?—About half an hour after I came out of action ; there were no ſhips a-head, and I don't recollect there were any a-ſtern of her.

How ſoon after was it before your ſhip was in a condition to wear upon the larboard tack ?—I wore about half paſt two.

Your ſhip then was in a condition to have obeyed the ſignal for the line of battle ?——Yes.

What then prevented you from doing ſo ?—I did not think myſelf at liberty to go down to the line of battle before the Vice-Admiral, in whoſe diviſion I was. I waited in conſtant expectation of his leading down his diviſion in obedience to the Victory's ſignal, until at laſt I bore down the Ocean, in conſequence of my own ſignal being made on board the Victory at ſeven o'clock.

How was you ſituated from the Vice-Admiral at that time?—Not far diſtant from him on the weather-quarter.

When you bore down, how far from the wind did you lead to get into the line?—I bore pretty large to give room to the Admiral's rear, and the Vice-Admiral's van, to place themſelves between me and the Admiral.

Can you recollect what ſail the Victory was under in the afternoon?—I cannot.

Do you know how many knots the Ocean went upon wind?—About ten, ſhe went about two knots, and after that between two and three knots. I was obliged to haul my main tack on board about ten, we had fallen ſo much down upon the French line.

Admiral Montague. What ſail had you ſet before ten o'clock?—The three top-ſails and fore-top-ſail, cloſe reefed.

After the Admiral ſtood to the Southward on the ſtarboard tack, and although the French were a-ſtern of him, had it the appearance of a flight?—Not in the leaſt.

Did the Vice-Admiral in the afternoon repeat any ſignal that was made from the Victory?—I ſaw the blue flag at his mizen peak.

Before or after your ſignal was made on board the Victory?—Before.

Did the Vice-Admiral, when he made that ſignal, make any effort to bear himſelf down to the Victory?—I did not ſee any.

Did you ſee any movements of the Victory that gave you an idea that the Admiral did not intend to renew the action that afternoon?—I did not.

If the Vice-Admiral of the Blue had led down his diviſion at five or ſix o'clock, was there not day-light ſufficient to have renewed the attack; and did there ſeem any other reaſon that prevented it?—I think if the line of battle had been formed by ſix o'clock, there was day-light enough to renew the action; and I do not recollect any other impediment.

Admiral Montague. If the French had been diſpoſed to renew the action, might they not have done ſo at any time of the afternoon?—I am convinced it was in their power to have renewed the action.

Was the French fleet in the morning of the 28th ſeen on board the Ocean; or had they run off in the night?—I ſaw but three ſail in the morning, one of which appeared to be a line of battle ſhip.

If I had chaced towards Uſhant, in the morning of the 28th, in the ſituation our maſts, yards, and rigging then were, and with the wind and weather as it then was, was there the ſmalleſt probability of coming up with the French fleet before they had reached Breſt?—Not the leaſt probability whatever.

How did Uſhant bear on the 28th at noon?—It bore E. S. E. half Eaſt, twenty-three leagues diſtant.

You have heard all the articles read, I deſire you therefore to ſtate to the Court any inſtances, if you ſaw or knew of any ſuch, wherein

negligently performed my duty on the 27th or 28th of July?—I can ſtate no ſuch inſtance. I was convinced at that time that Admiral Keppel left no means uneffected to bring the French to action, or of renewing it afterwards. I have remained in theſe ſentiments invariably ever ſince.

Croſs-Examination by Sir Hugh Palliſer.

Was you near the Victory when the ſignal was made?—No, I was to leeward, and a-ſtern.

Where was your ſtation upon the larboard tack?—On the Vice-Admiral's lee-quarter.

Where is the line a-head?—A-head of the Vice-Admiral, and next to him.

What ſhip was next a-head of you?—The Egmont, and ſhe was ſo cloſe to the Formidable that I was ſeveral times baulked in my fire, and run the hazard of being aboard of the Egmont, from the firſt to the laſt of our being in the engagement.

Sir, as it has come out in the courſe of the evidence on this trial, that the ſignal was made for ſeven ſhips of my diviſion to chace, how many did that leave with me?

On the Admiral's objecting to Sir Hugh's telling a witneſs what came out in evidence, and croſs-examining thereon, an altercation took place between the accuſer and the accuſed, upon which Admiral Montague moved the Court to withdraw. On their return, the court agreed, that the proſecutor in croſs-examining is to confine himſelf to ſuch facts as have fallen from the witneſs on his firſt examination, and not to dive into new matter.

Admiral Arbuthnot. The mode of conducting a trial is for the proſecutor to call all the evidence he thinks proper to eſtabliſh his charges, and the priſoner has a liberty of croſs-examining them as to what they have delivered in evidence; then the priſoner calls all the proof he can of his innocence, and the proſecutor examines thoſe witneſſes to what they have ſaid, and nothing farther.

Sir Hugh Palliſer. I ſhould ſuppoſe I have a right to aſk any queſtions about ſhips of my diviſion.

Admiral Montague. I am willing to ſit here until the day of reſurrection to hear either party, but, for God-ſake, keep to the point.

Captain Cranſton. I apprehend the proſecutor cannot examine the witneſs in ſupport of the charge, as he has done calling evidence.

Did the Ocean proceed in the ſame tack until ſhe paſſed the Victory?—She did paſs on the ſtarboard until ſhe paſſed the Victory on the larboard tack.

When did you ſee the ſignal for the line on board the Victory?—When we paſſed each other on different tacks.

Where would the ſtation of the Ocean have been agreeable to that ſignal?—A-head of the Formidable, who ſhould have been a-head of the Victory.

Did

Did the whole of the Vice of the Blue's diviſion continue to paſs the Victory after the action, while they were upon the ſtarboard tack? —I cannot ſay.

Admiral Arbuthnot. Was your ſhip at the time ſhe wore, in a condition to go immediately into action, and keep her ſtation in the line?—I don't recollect any impediment to the Ocean going into action after ſhe had wore.

Sir Hugh Palliſer. When you came out of action, was you not in condition to engage immediately?—The Ocean did not receive ſo much damage, as two frigates would have given in half an hour. We were ſcarcely warmed with what we had.

Could you have gone into action immediately?—Yes, we could have fought, but could not manœuvre the ſhip ſo as to wear and ſtay directly, as our ſails and rigging were much cut.

Admiral Arbuthnot. As an able and gallant Officer, I aſk you whether, if I had had the command of a ſquadron, and you a pennant under me, and had ſeen, upon coming out of action, any omiſſion in my conduct, which all mankind are liable to, ſhould you not have thought it your duty, for the honor of the ſervice, (my honor being out of the queſtion) to have informed me what your opinion was, and how I could have remedied it?——Moſt certainly.

Sir Hugh Palliſer. Is it not equally proper for the ſuperior to inform the inferior if he ſees any omiſſion?—I think the obligation is reciprocal.

CAPTAIN BRADLEY, of a Fire-ſhip.

Admiral Keppel. When did you paſs the rear of the French fleet? ——About 20 minutes after one.

Did you obſerve the Vice of the Blue at that time, and where was he?—I was a little before his lee-beam, and juſt out of gun-ſhot.

Had you obſerved him in danger of being cut off?—I had not.

At the time the Vice-Admiral of the Blue came out of action, how many ſhips were there a-head or a-ſtern of him, and how near were they?—The Worceſter immediately a-ſtern, and two ſhips were a-head of him, the Worceſter appeared to be cloſe.

How far was the Victory from you when you obſerved her at the larboard tack?—About a mile.

CAPTAIN EDWARDS, of the Sandwich.

Admiral Keppel. Could not the French have engaged the Engliſh fleet on the 24th, if they had thought proper?—Moſt certainly.

Did I not form the line on the firſt day I ſaw them, and make ſignal on the ſecond day for that purpoſe?—You did.

If I had purſued the French in a line of battle, could I have preſerved my nearneſs to them?—No.

Did I uſe every means to bring them to action?—Yes.

Did it appear from their motions, that they were inclined to come to battle?—I judged that they wiſhed to avoid it.

If you had commanded the Britiſh fleet in the ſame ſituation, would you have heſitated one moment to give them battle?—No.

Could they not have brought us to action on any of theſe days? Moſt certainly, having the advantage of the wind.

Did they ſhew any greater diſpoſition of bringing to action on the 27th, than on the preceding days?—No.

What would have been the conſequence if I had formed the fleet into a line of battle on the 27th, inſtead of cloſing with them as I did?——No engagement.

With what ſhip did you engage?—The ſecond ſhip a-head of the French Admiral fired upon me; I ordered our fire to be reſerved for the Admiral, but the men, from their impetuoſity, begun with the ſhip next a-head of the Admiral.

Was the French fleet in a regular well-connected line of battle? ——No.

Did you obſerve one of the French ſhips with her main-yard carried away by the Prince George or the Sandwich?—I did ſee one of their main-yards carried away, and Lieutenant Buchanan, who commanded on the lower-gun deck, told me he flattered himſelf he had pointed the gun that had done it. I ſaw another ſhip with her mizen-yard half down, and another with her top-ſail-ſheet cut.

Did you ſee the ſignal to wear ſoon after coming to action?——I did not, but I obſerved the Admiral to wear.

Was the Sandwich in a condition to follow the Victory, after ſhe had wore and got upon the larboard tack?—She was not.

Did you obſerve the Victory wear back to the ſtarboard tack, and what was your ſituation?—I did, and we were ſtopping our leaks; I ordered the ſhip to be wore, but the carpenter told me, the damages the ſhip had received were ſuch, that he could by no means repair them, if we wore and laid our head the other way. I aſked him if they were material; he ſaid they made much water, I therefore ordered him to make the utmoſt diſpatch, and let me know when he had compleated them.

Did you obſerve any other ſhips about you diſabled at that time? —Yes, the Courageux, the Egmont, Robuſte, and Ramillies.

When the Victory wore again, did you ſee her point towards you and the other diſabled ſhips?—She did, from the wind.

Did that courſe ſerve to make her near the enemy, or increaſe the diſtance from them?—Certainly to near the enemy. For at four o'clock when my damages were repaired, we wore within random ſhot of the enemy, hauled our wind, and joined the Admiral.

Did you obſerve the Victory at this time with any ſignals flying? —At four I obſerved the ſignal for ſhips to bear down to the Admiral's wake. At three quarters paſt four I ſaw the ſignal for the line of battle a cable's length aſunder. At half paſt five a ſignal for three ſhips that were out of their ſtation. Three quarters paſt ſix, ſignals for ſeveral ſhips of the Blue diviſion to make more ſail. Theſe ſignals were taken by my watch.

Did you obſerve what ſail the Victory carried that afternoon?—The Victory then ſeemed to me to have fore-ſail and reefed top-ſails.

Did the ſignals and motion of the Victory convey to you any idea that the Admiral did not intend to renew the engagement that afternoon?—By no means.

Had theſe manœuvres of the Admiral the leaſt appearance or a flight?—No, he was bearing down to them when I paſſed them, as I have ſaid.

Did you ſee any of the French fleet on the 28th?—Yes, three ſail; one of them appeared to be a capital ſhip, the others frigates. They were four or five miles diſtant. The Sandwich was not in a condition to chace.

Did you ſee any other ſhips ſignals made to chace?—I did not, for as they had run away, I had done with my minutes.

Capt. Edwards ſaid, he thought it would have been impoſſible for the Britiſh fleet to have come up with them before they reached Breſt. And he concluded his evidence, by ſaying, he could ſtate no inſtance of negligence in the conduct of the Admiral, for he knew of none.

The Honourable CAPTAIN WALSINGHAM, of the Thunderer, was then called.

Admiral Keppel. From the 24th, to the moment of bringing them to action, did the French ſeem to avoid coming to action?—They always avoided it, and you did your utmoſt to bring them to battle.

Had you commanded, would you have heſitated one moment to have gone down to battle on any of thoſe days, on account of wind and weather?—Not a moment.

What in your opinion would have been the conſequence if I had formed a line of battle on the 27th, inſtead of cloſing with them as I did?—You never, Sir, could have brought them to action.

What part of the French fleet did you begin the action with?—About eleven or twelve ſail from the rear.

Did it appear to you to have been the object of the French fleet to have gone off to windward, without coming to action, if they could have paſſed the Engliſh far enough to windward?—I have no doubt of it.

I am charged with having advanced to the French fleet without forming a line; I deſire that you will acquaint the Court if I was juſtifiable in doing ſo?—Certainly. You had no other chance of bringing them to action.

I am charged with ſtanding to a great diſtance beyond the enemy before I wore to ſtand towards them again; I deſire to know of you if the fact be true?—I think you wore very ſoon. I had ſome difficulty in following you.

Did I make the ſignal for the line of battle as ſoon as I wore?—You did.

Was that the propereſt ſignal I could make to collect the ſhips together?—Without all doubt it was.

I am charged with ſhortening ſail as I advanced towards the enemy, I deſire to know if I had a ſufficient force about me to admit of my advancing faſter than I did?—Undoubtedly not.

Did you obſerve me lead down from the wind for the protection of the ſhips diſabled to leeward?—I did, and ſaid to my officers on that occaſion, that you bore down very much unſupported.

Was the ſail I carried, ſuch as could prevent the Vice of the Blue from coming into the line?—I think not.

What ſail had you ſet to keep in your ſtation?—My top-ſails in general, ſometimes my mizen-top-ſail aback.

Was not that you had for a main-top-ſail a mizen-top-ſail?—It was.

With the ſail you have deſcribed, although the French fleet were a-ſtern, had it the leaſt appearance of a flight?—No, Sir, *I heard the charge with indignation, and I reprobate the idea.*

Did you ſee the Vice-Admiral of the Red leave the rear to form a-head?—I did.

Was there not day-light at that time ſufficient to have attacked the French fleet; and do you not think I ſhould have renewed the fight, if the Vice of the Blue had led his diviſion down?—There certainly was time enough; and as a ſtrong proof that I imagined you intended renewing it that night, my hands were never from their quarters.

Can you aſſign any reaſon why I did not attack the French fleet, while there was any day-light?—There was but one, and that was on account of your not being ſupported by the Vice-Admiral of the Blue.

Did the Vice of the Blue ever make any viſible effort to come into action?—I ſaw none.

How long did you ſee the Formidable's fore-top-ſail unbent?—Four or five hours.

Did you obſerve any ſignal from that ſhip, ſignifying her diſtreſs?—No.

Did you ſee any ſhips called for the purpoſe of changing his ſhip, that I might know his diſtreſs?—No.

Did you ſee the Vice-Admiral repeat the ſignal for the line of battle that afternoon?——No.

Did you ſee the French fleet on the morning of the 28th?—I ſaw three ſail, and I ſaw your ſignal to chace.

If I had made the general ſignal to chace to leeward, was there the leaſt probability of coming up with the French fleet before they entered Breſt?—I think not.

State to the Court wherein (if you know of any inſtance) I negligently performed my duty on the 27th or 28th of July?—I know of none. I have always been taught to look up to you as a brave and gallant officer, a man of courage and ability. I never had the honour to ſerve under you before, but, prejudiced in your favour as I was, your conduct exceeded my moſt ſanguine expectations.

Admiral Keppel. I beg pardon of the Court; but as notice has been taken of the Thunderer firing into the Egmont, I wiſh to aſk how that happened?—I beg leave to mention, that this was in the heat of action, when we were obſcured by ſmoke, and not by confuſion.

TWENTY-SIXTH DAY, FRIDAY, *February* 5.

THE Court reſumed at ten o'clock, when the croſs-examination of CAPTAIN WALSINGHAM, of the Thunderer, began.

Sir Hugh Palliſer. Was the ſhip you firſt began to engage a-head or a-ſtern of the French Admiral?—Many ſhips fired at me whoſe ſhot fell ſhort, and I received the fire of two or three ſhips that went through my ſails, but I believe I did not fire till I came to the Admiral.

Was you a-head or a-ſtern of the Victory, or upon one ſide, or how?—I was a-ſtern of the Sandwich, who was the next but one (the Prince George) to the Victory.

Was you a-head of the Victory, or a-ſtern in the evening?——When on the ſtarboard tack I was a-head of the Victory.

What time did the Red diviſion quit the ſtation of the Blue?——Before five.

What time did you firſt obſerve the Formidable?—As ſoon as I came out of the action, I went into the ſtern-gallery, and obſerved the Formidable, and, upon my word, I was particularly pleaſed with the manner in which ſhe engaged; it did infinite honour to the officers of that ſhip. [Withdrew.]

CAPTAIN CLEMENTS, of the Vengeance, called.

Did the enemy, from the 24th to the 27th at noon, ſhew any deſign of coming to action?—No.

Did I uſe every endeavour to bring them to action?——I think you did.

He proceeded to ſay, that if he had commanded a Britiſh fleet, in a ſimilar ſituation, he would not have heſitated one moment to have gone down to engage them, on account of wind and weather. And it was his ſincere opinion, that if the Admiral had formed a line of battle, inſtead of cloſing with them in the manner he did, he would certainly, on account of the ſqually weather, have loſt them. That the Admiral had it not in his power, from having no ſhips to ſuccour him, to advance faſter than he did on the larboard tack, to prevent the enemy from forming their line on the ſtarboard tack. That the Admiral's wearing again on the ſtarboard tack was a neceſſary meaſure, ſince it gave his ſhips time to repair, protected his diſabled ſhips, collected his fleet, was particularly well executed by the Victory, and was ſo far from carrying the appearance of a flight, that it was wearing to the enemy.

If

If I had chaced towards Uſhant, in the ſituation the fleet was in, with the wind and weather as they were, was there the ſmalleſt probability of coming up with the French fleet before they reached Breſt?—No, not the ſmalleſt.

You have heard all the articles of the charge read: I deſire you, therefore, to ſtate to the Court any inſtances, if you know of ſuch, wherein I negligently performed my duty on the 27th or 28th of July?—I have long had the honour of knowing Admiral Keppel; I have had the higheſt eſteem for him, both as a man and as the beſt of officers, and I do not think it was poſſible for more to be done than was done by the Admiral during all the time the French fleet waa in ſight. [Withdrew.]

CAPTAIN M'BRIDE, of the Bienfaiſant, called in.

The Captain depoſed, that the French fleet was firſt ſeen by him, between one and two, on the 23d of July, that the weather did not open till towards ſeven in the morning of the 24th, when he again ſaw them N. W. and made a ſignal to that effect.

Admiral Keppel. Did you not come on board the Victory in a ſmall-boat, to inform me what obſervations you had made?—I did.

What were thoſe obſervations?—I ſaw three ſail of them conſiderably to leeward of the others; one had her main-maſt gone, another her main-top-ſail cloſe-reefed, by which I imagined ſhe was crippled; and as the weather was ſo cloſe, I conſidered that the Admiral might not have ſeen them, which was the reaſon that I went down to inform him; the three ſail I ſpeak of were at leaſt three leagues from the body of the fleet, and other two ſail ſtill farther leeward.

What orders did you receive from me in conſequence of the information you gave?—The Admiral obſerved theſe two ſhips muſt be cut off, or the French fleet muſt come down to ſupport them. I was ordered to acquaint Capt. Maitland, of the Elizabeth, to chace thoſe ſhips, notwithſtanding he ſhould make the ſignal for the line of battle, and we ſhould continue chacing them, unleſs a particular ſignal was made to call in the cruizers.

Would the weather at that time permit us to have fought our lower-deck guns?—Undoubtedly, any ſhip might have fought her lower-deck guns, when I, in a ſix-oar cutter, could go with the meſſage, and keep up with the ſhips.

Did I ſoon after make a ſignal for a general chace, and did it not make a ſeparation of two of their capital ſhips?——It did.

If the French fleet had intended battle, was not the ſeparation of thoſe two ſhips a great inducement for them to bring it on?—It undoubtedly was.

He proceeded to ſay, that the French had all along avoided coming to an engagement; and that the Admiral, by carrying as much ſail as his ſlow-ſailing ſhips could keep up with, did all that an officer could do to bring on a general engagement; and he declared, that

that if he, for his part, had been the ſenior officer of a fleet, in ſimilar circumſtances, he would not have heſitated one moment to have gone down to battle; for if he had, he ſhould not have deſerved ever to have ſet his foot in this country again; that the Victory, while ſhe ſtood upon the larboard tack, towards the enemy again, had not ſufficient force either to have attacked the enemy upon wearing, or to interrupt their forming again upon the ſtarboard tack; that he ſaw the ſignal for the line of battle a-head hoiſted on board the Victory, a few minutes after the ſignal for battle was hauled down.

Did you ſee the Formidable paſs the Victory on the ſtarboard tack, while I was ſtanding towards the enemy with the ſignal for the line flying?—I did.

Had ſhe paſſed the Victory, and gone to the ſouthward, before the ſignal for wearing was made?—She had.

He ſaid, that the operation of ſtanding to the ſouthward, with the ſail that the Victory and the other ſhips carried, ſo far from having the appearance of a flight, ſtruck him as the well-timed manœuvre of a judicious officer, and the only one at that time in his power for collecting his fleet, which were in a very diſorderly ſituation, on account of their damages, to form the line of battle, and to protect five ſhips that lay diſabled to leeward; and Sir Robert Harland's taking a ſtation in the rear, prevented the French from falling upon the Britiſh in their diſperſed ſtate.

Had not the French the power of attacking us all that afternoon?—If good fortune had placed us in their ſituation, and them in ours, if we had not deſtroyed the whole fleet, we deſerved to have been ſent on board the Juſtitia frigate.

Did the motions of the Victory convey to you an idea that the Admiral did not intend to renew the fight in the afternoon of the 27th?—Not in the leaſt.

Can you aſſign any reaſon why the fight was not renewed?—I apprehend in waiting for the Vice-Admiral of the Blue, and his diviſion, to come down agreeable to your ſignal.

If the Vice-Admiral had come down by ſix o'clock, was there not ſtill day-light enough to have fallen upon the enemy, and obliged them to have ſurrendered, or to have run away before night?—It would certainly have determined whether they meant to ſtand their ground or run away, as we had full two hours and a half good day-light after ſix, at that time of the year.

What diſtance was the Vice-Admiral of the Blue from his ſtation at five o'clock, and how did he bear from you?—He was upon my weather-beam about three miles.

Did any thing appear to you, to prevent his bearing down?—His fore-top-ſail only was unbent; any interior reaſons I am unacquainted with.

How long was his fore-top-ſail unbent?—Upwards of four hours.

Did he ever make any efforts to come into the line?—None that I ſaw.

In the evening, he ſaid, the tenth ſhip of the French van was a-breaſt of him, about two miles to leeward. He only carried cloſe-reefed top-ſails, ſome of them aback during the night, juſt ſo much as would give him ſteerage way, and keep him in his ſtation in the line. The night was very dark; and about eleven o'clock he ſaw a rocket thrown up, and after that every half-hour, and ſometimes oftener, a light was ſhown, and a flaſh, like that of a muſket, ſeen till day broke. In the morning he ſaw three ſhips, one of which he took to be a line of battle ſhip, another a frigate, and the third he could not judge of; the ſhip neareſt to him was between four and five miles diſtant, and there was none between him and them. The ſignal was made for the Bienfaiſant, among others, to chace, and he did chace that ſhip for ſome time, ſo that if any other ſhip had been between him and the French, he muſt have ſeen her.

If I had followed you with the whole fleet, in the ſituation they were then, was there the leaſt probability of coming up with the French fleet before they reached Breſt?—I do not think, if the Britiſh fleet had not been crippled, there was the ſmalleſt probability of coming up with the French fleet, conſidering the great ſtart they had a-head, and the ſhort way they had to go, it being only, by my reckoning, 23 leagues to Breſt; and conſidering that our ſhips were moſtly more than a twelve-month old, and ſome of them two years.

Captain M'Bride, you have heard all the articles of this charge read; I deſire you to ſtate to the Court any inſtances, if you ſaw or know of ſuch, wherein I negligently performed my duty on the 27th and 28th of July?—I know of none; and I think Admiral Keppel realized every favourable opinion that this country ever entertained of him, by his conduct on that occaſion.

Croſs-Examination by Sir Hugh Palliſer.

Is it poſſible for cutters to paſs from ſhip to ſhip, when ſhips could not open their lower-deck guns?—It is poſſible, but that was not one of the days.

With what ſhip did you engage?—Captain M'Bride obſerved to the Court, that he had been ſummoned by the Vice-Admiral, as well as the Admiral, to give evidence; and he conceived, that if he had had any queſtions to aſk relative to his charge, he ought to have called him before; but now that he had cloſed his evidence, he thought he could only croſs-examine him on his former evidence. At the ſame time he ſaid, he had not the ſmalleſt objection to any queſtion that he could aſk. The Admiral ſaying the ſame, the queſtion was admitted, and he anſwered, that he engaged between the Valiant and the Foudroyant.

Did you ſee the Duke, or any other ſhip, fire into the Foudroyant?—I ſaw the French fire into her; I ſaw no other ſhip do ſo.

The Honourable CAPTAIN JOHN LEVESON GOWER, of the Valiant, called.

He depoſed, that the Admiral, in the morning of the 24th. made the

the ſignal for the general chace, and the wind was ſuch as enabled him to go under his top-gallant ſails. That the Admiral again made the ſignal for the line in the afternoon of that day, and invariably purſued the French fleet from that time to the moment he brought them to action, uſing every endeavour to get up to them, while they run off as faſt as they could. For his own part, he would not have heſitated one moment, on any of theſe days, to have brought them to action. That there was no greater indication on the morning of the 27th of the French intending to come to action, than on the preceding days; and it was his ſincere opinion, that if the Admiral had formed the line that morning, inſtead of purſuing them as he did, the French would have got clear off, without being brought to action. That the Admiral did not ſtand to a great diſtance beyond the enemy before he wore. The charge was not true, for he wore in ten minutes after the firing ceaſed from the Victory, or thereabouts. That he made the ſignal for the line of battle immediately after he had wore, which was the propereſt ſignal he could make for collecting the fleet together. That the Admiral had not a ſufficient force to admit his advancing faſter towards the enemy than he did. The Valiant was not in a condition to make ſail for near an hour, after ſhe came out of the fire, and there were ſeveral ſhips ſouthward of the Valiant, and ſtill more a-ſtern of the Victory. So that the Admiral had not either a ſufficient force collected to re-attack them, or to prevent them forming. That the enemy, inſtead of ſtanding after the Britiſh fleet as the charge ſtates, edged away to five diſabled ſhips to leeward, which obliged the Admiral to bear down, to prevent their being cut off; and as ſoon as he came into his ſtation, he bore down directly to theſe ſhips. That the Admiral made every neceſſary ſignal, while on the ſtarboard tack, to collect his ſhips and form the line, and carried only double-reefed top-ſails and fore-ſail, which enabled the van of the French fleet to range up with him, under their top-ſails, and at times ſailing even with their mizen top-ſails a-back. That the Valiant carried but her top-ſails to preſerve her ſtation. And that this manœuvre had not the appearance of flight in the ſmalleſt degree. The French fleet might have attacked the Britiſh in any part of the afternoon. The Vice-Admiral of the Blue was broad on the weather-quarter, about two and a half, or three miles from the Valiant, and except that his fore-top-ſail was unbent, he ſaw no reaſon that prevented him from coming down to the line, ſince his maſts and yards were ſtanding. He knew not when the fore-top-ſail was bent, though it might have been ſo between ſeven and eight o'clock, but when he had given over all hopes of returning to action, he troubled his head no more about him. He ſaw no ſignal made on board the Formidable, to acquaint the Admiral of his diſability, nor any ſignal repeated but the Blue flag at the mizen-peak. The plain reaſon that the action was not renewed, was, that till four o'clock, very few ſhips were with the Victory, and after that till night, the Blue diviſion did not come down into the line.

Admiral Keppel. Then do you believe, that if the Vice-Admiral had lead his diviſion down, agreeable to ſignal, I ſhould have re-

newed the action?—From your very ſpirited behaviour before that, I have not a doubt of it.

If I had chaced towards Uſſiant in the morning of the 28th, with the fleet in the ſituation they then were, was there the ſmalleſt probability of my coming up with them before they reached Breſt?—— I think not.

Your ſituation being neareſt to me in the purſuit of the enemy, and in action, which gave you an opportunity of viewing actions in nearly the ſame point of view with myſelf, I deſire you to ſtate to the Court any inſtance, that you ſaw or know of, wherein I negligently performed my duty on the 27th and 28th of July?—I don't know any ſuch inſtance. I then thought, and I now think, that your whole conduct was ſpirited, able, and great.

Croſs-Examination by Sir Hugh Palliſer.

Had not the Admiral the whole of his diviſion with him, and part of the Blue diviſion, when he ſtood upon the larboard tack?—There were five ſail to the ſouthward diſabled. The Elizabeth was on the ſtarboard tack; another was on my lee-beam. Two of the Red diviſion were diſabled. My ſhip was three miles diſtant from the Admiral, very much diſabled.

Was the Red diviſion in a condition to have re-attacked the enemy?—I could not ſee their condition, they were ſo much to windward both of the Admiral and me.

Are we to underſtand, that the Britiſh fleet was ſo much beaten, that they were not able to renew the engagement as ſoon as the French?—About four o'clock a great many ſhips got into their ſtations, being only, as I conceive, cut, as I was, and therefore were ſoon put to rights, and after that I know of no other reaſon why the action was not renewed, but that your diviſion, Sir, did not come down.

Was not the Red diviſion ordered to take the ſtation of the Vice-Admiral of the Blue, in conſequence of his having come immediately out of action?—I cannot ſay when they took that ſtation, but you muſt have been a great while out of action, Sir, at that time.

You ſay you ſaw the Blue flag hoiſted on board the Formidable, are you ſure it was not hoiſted at the mizen-peak, beneath the ſignal for the line?—I am ſure it was not; there was no flag of any kind above it.

At this diſtance of time can you ſpeak with preciſion; are you poſitive it might not be at another time?—I muſt needs ſay, Sir, this is a very extraordinary queſtion, after I have particularly ſaid I did not ſee it at any other time.

CAPT. JERVAIS, of the *Foudroyant*, depoſed, that from the time of our ſeeing the French fleet in the morning of the 24th, when they diſcovered the face of the Britiſh fleet, to the moment they were brought to action, he was fully convinced they never intended bearing

bearing to action, and that the Admiral uſed his moſt unremitting endeavours at all times to bring them to battle. He, for his part, would not have heſitated one moment to have done the ſame, if he had had the command, for any officer who had heſitated, would have been unworthy a command in the Britiſh fleet. When the ſignal was made for chacing in the morning of the 27th, the Vice-Admiral of the Blue was on the lee-bow of the Foudroyant, about three quarters of a mile diſtant. The evident object of that ſignal was to combine the diviſion of the Vice-Admiral of the Blue with the centre diviſion. He ſaid, if the Admiral had formed the line of battle inſtead of bringing with the leeward ſhips by ſignal to chace, he was clearly of opinion the Admiral could not have brought on the engagement that day. That the ſudden and unexpected cloſure with the French fleet was the effect of the change of the wind.

What would have been the conſequence if I had formed the line at this time?——You would have given time to the enemy to form themſelves into ſome order, when they were much diſordered, and have ſubjected yourſelf to an attack before your own fleet could have formed, or have permitted the enemy to get out of gun-ſhot, and eſcape, if they had been ſo inclined.

He ſaid, that the Admiral, in not forming the line, was not only juſtifiable, but praiſe-worthy. That the charge of his having ſtood to a great diſtance beyond the enemy before he wore, was not true. That the ſignal for the line of battle, made by the Admiral, while on the larboard tack, was the propereſt of all ſignals for collecting the fleet, as it required the moſt prompt obedience. To the beſt of his recollection, when he approached the Admiral on the larboard tack, he had no more than two or three ſhips about him of his own diviſion, and the reſt were at a conſiderable diſtance a-ſtern, and he had not at any time, while on that tack, a ſufficient force with him to renew the fight.

Did you ſee the Formidable at any time on the larboard tack, after the engagement?—I did not.

He ſaid the Admiral had not the means in any ſort of preventing the French forming on the ſtarboard tack. It appeared to him that the Admiral in wearing, and ſtanding to the ſouthward, had two great objects in view. The one, to cover five diſabled ſhips that lay to leeward; and the other, to give time to the Vice-Admiral of the Blue and his diviſion to form in his ſtation a-ſtern. He knew not a ſignal that the Admiral could have made which he did not make to collect his fleet. The ſail the Admiral carried, was juſt neceſſary for the protection of the diſabled ſhips, and could not poſſibly prevent the Vice-Admiral of the Blue from coming into his ſtation, as it permitted the French to range up with him under their top-ſails.

Had this evolution, or my ſubſequent conduct, the appearance of a flight?—Very much otherwiſe, ſince the French fleet might have attacked the Britiſh fleet all the afternoon, and at ſome periods with great advantage. His ſtation in the line of battle a-head was next a-ſtern to the Victory, which he gained about three o'clock in the afternoon, and traverſed till four in the morning.

Did

Did you think I meant to renew the engagement in the afternoon? —I did, and as a proof of it, I called my people up, thinking it adviſeable to ſpeak a few animating words to them.

What prevented my not renewing the engagement?—The Vice-Admiral of the Blue's not bearing down to his ſtation in the line.

Did he ſeem to have it in his power to do ſo?—He did.

Was there nothing that appeared to you to prevent it?—Nothing but his fore-top-ſail's being unbent.

Preſident. Might he have come into his ſtation under his main-ſail and fore-ſail?—I think he might.

How many points might he have bore away from the wind?—At leaſt four points.

Did you ſee him make any ſignal to the Admiral of his being diſabled?—No.

Did you ſee him, at any part of the afternoon, repeat the ſignal for theli .e?—No.

From his log-book it appeared, that on the 28th Uſhant bore North 79 degrees, Eaſt 21 leagues.

Your ſituation being neareſt to me in the purſuit, &c. I deſire you to ſtate to the Court any inſtances wherein I negligently performed my duty, on the 27th and 28th of July, if you know of any ſuch? —With great reſpect to you, Sir, and great deference to the Court, I hope I ſhall be indulged with that queſtion being aſked from the Court.

It was accordingly put by the Court, and was thus anſwered:

I feel myſelf bound, by the oath I have taken, to anſwer that queſtion; and I think it conſonant to the practice of all naval courts-martial; I have long had the honour of knowing Admiral Keppel; I never ſerved under him before; but I am happy in having the opportunity of publiſhing to this court, and all the world, that during the whole time the Engliſh fleet was in ſight of the French fleet, to the 27th of July, he diſplayed the greateſt naval ſkill and ability, and the moſt noble enterprize; and his conduct on that day, with the prompt obedience of Sir Robert Harland, will be ſubjects of my admiration and imitation as long as I live.

He gave an account of the damages of the Foudroyant in anſwer to a queſtion of Admiral Montague's, and concluded his evidence amidſt the applauſe of all the audience.

TWENTY-SIXTH DAY, SATURDAY, *Feb.* 6.

CAPTAIN JERVAIS, of the Foudroyant, was again called to the bar.

Admiral Keppel. Did you ſee any of the French fleet in the morning of the 28th?—I ſaw three ſail, and the boy at the maſt-head ſaid he ſaw eight ſail more.

Did you ſee any ſhips ſignals made for chacing thoſe ſhips?—I did.

Was your ſhip in a condition to chace?—No.

Was there any probability of coming up with the French fleet before they reached Breſt?—Not the ſmalleſt probability.

Croſs-Examination by Sir Hugh Palliſer.

I think you ſaid there was no more indication of the French coming to action in the morning of the 27th, than on the preceding days; what then was the neceſſity of taking ſeven of the Vice-Admiral of the Blue's diviſion from him, to combine them with the centre at that time more than at any other?——I have ſtated to the Court, that the Vice-Admiral of the Blue and his diviſion were three miles and a half to leeward of the centre, under a very low ſail, and the Formidable, as I think, going ſtill further to leeward. It was therefore, as I think, abſolutely neceſſary to combine them with the centre; and I will add, that in my judgment, and I ſaid ſo at the time, the Vice-Admiral himſelf accepted the meaning of the ſignal, for very ſhortly after the chacing ſhips had made ſail, he crouded ſail himſelf to get up to windward.

I think you ſaid yeſterday, that the Formidable was three miles and a half on the beam of the Foudroyant?—I do not mean, Sir, to quibble about an idea; I did not ſee on what point of the lee-beam ſhe was. It is a very common expreſſion to ſay the lee-beam, when a ſhip is ſeveral points abaft the beam. I meant however to inform the Court, that you was far diſtant from your ſtation, agreeable to the order of ſailing.

If thoſe ſhips had been permitted to remain with the Vice-Admiral, would they not have gone into action with him?—I don't ſee any reaſon to the contrary. But I beg leave to ſtate to the Court the cauſe of our coming into action at all; which cauſe did not exiſt when thoſe ſhips were ordered to chace. It was upon a very material ſhift of wind in our favour, which ſhift did not happen for four hours after thoſe ſhips chaced.

Be kind enough to ſtate to the Court how much the wind did ſhift that morning. Your log-book is on the table?—Upon the log-book it ſhifted, at eight o'clock, one point; and from ten to twelve it ſhifted two points. A very material advantage, at the ſame time, was gained by a very ſucceſsful evolution, in tacking the fleet altogether, which was performed beyond my expectation. But I wiſh to be underſtood, that I am not directed by my log-book in the evidence. Though I would not have a log-book altered in my ſhip, on any conſideration on earth, I cannot conceive that I am to be guided by it; ſince employed in the great duty of our engagement, a man cannot pay that attention to the minutiæ of occurrences, as to be accurate in relating them. I give my evidence from recollection, and declare the facts ſimply, as they ſtruck me at the time, and as they have dwelt with me ever ſince.

Did you ever know, or did you ever hear, of an Admiral commanding a third part, to have his ſhips drafted from him, and left to

go

go into action unſupported?—I muſt beg leave before I anſwer that queſtion, to inform the Court, that no ſuch fact exiſted on the 27th of July. I certainly never did hear of ſuch a caſe. But I do not admit that it was ſo.

Did not the manœuvrings of the French fleet in wearing, contribute to bring them to leeward, and enable the Britiſh fleet to lie up to them?—I ſaw them in the operation of wearing between eight and ten, which certainly brought them to leeward.

Admiral Arbuthnot. Notwithſtanding that, when you came into action, could you fetch the van of their fleet?——No, not in the Foudroyant.

You have ſpoken of another manœuvre which you obſerved in the French fleet; pray deſcribe it?—A ſquall obſcured them at that time from our view; but I believe, having ſeen the ſucceſs of our evolution, they attempted to do the ſame, and eſcape to windward, without coming to action; but ſeveral of their ſhips miſſing ſtays, it certainly threw them into that confuſion in which we found them.

In a diſtant view of a fleet, in the operation of changing their poſition, does it not give them the appearance of diſorder, although they may be ſucceſſively wearing in each other's wake?—It certainly does; but the diſorder obſervable in the French fleet continued till I had paſſed their rear. They were in no line.

Can you ſay that the French did not lead large while they were upon the ſtarboard tack?—In the act of wearing, they certainly went large, but it does not ſtrike me that they led large afterwards.

If the Admiral had made the ſignal, agreeable to the 11th article of his own fighting inſtructions, for the ſhips neareſt the enemy to form, without regard to the general form delivered, and the reſt coming up, had formed in like manner; in that caſe, would not the fleet have attacked with more advantage than they did?

The Court deſired the 11th article to be read.

It was found, on referring to his former evidence, that Captain Jervais had ſaid the Admiral could engage in no other manner than he did.

If the ſhips of the Blue diviſion had remained together, and engaged in a connected body with their own Admiral, would they not have done more execution, and have ſuffered leſs?—I do not know that any part of the queſtion did really exiſt.

Were not the chacing ſhips ſeparated and diſtanced from each other more than they were before?—I did not know they were ſeparated at the time the Vice-Admiral came into action.

At the time before the Admiral wore the ſecond time, to ſtand to the ſouthward, what was the ſituation of the Red diviſion?—They were to windward; but I cannot recollect preciſely their ſituation. I ſo little expected to be called here, on this occaſion, that I am not ſo well provided as I could wiſh. I might have remembered them better.

Whilſt

Whilſt the Admiral was ſtanding upon the larboard tack, did he ever make the ſignal for ſhips to windward to bear down, or for particular ſhips to make more ſail, or the ſignal for drawing any ſhips out of their ſtation?—I did not ſee theſe ſignals made. The ſignal for the line was made; and if theſe had been made, very few ſhips could have obeyed them. I am ſure I could not.

Why was it neceſſary to require an exact line of battle in the afternoon, when it had not been judged neceſſary in the morning?—The Admiral is charged with not forming a line of battle, nor keeping his ſhips near enough to the enemy, to be able to renew the engagement. In anſwer to that part of the charge, I ſay the Admiral made the ſignal for the line, and uſed every means to enable him to renew the attack.

Am I to underſtand, from your account in general, that the condition of the fleet was ſuch as to render it improper to face the enemy again?—We did face the enemy.

Did you ever hear or know of an Engliſh fleet turning their ſterns upon an enemy of equal or inferior force?—I deny the fact in all its extent and meaning.

You have ſaid that the enemy might have reached us; in that caſe were not our ſterns to them?—I have anſwered this queſtion—I have explained the whole of that manœuvre already, and ſhall not ſpeak of it further, unleſs ordered by the Court.

Preſident. Did Admiral Keppel, from the 23d to the 28th of July, do any one act diſgraceful to the Britiſh flag?—I conceive I have given a full anſwer to that queſtion; but I am ready to ſay again, I do not know of any one inſtance, and I do ſay ſo.

Do you know, that in all that time Admiral Keppel loſt any one opportunity of doing a moſt eſſential ſervice to the ſtate, and by loſing it tarniſhed, the honour of the Britiſh flag?—I know of no ſuch inſtance. [Withdrew.]

CAPTAIN KINGSMILL, of the Vigilant, called.

Admiral Keppel. I am charged with having advanced to the enemy, and made the ſignal for battle without forming the line. What would have been the conſequence if I had formed the line, inſtead of cloſing with them in the manner I did?—The conſequence, would have been, that the French would not have been brought to action that day.

I am charged with not having advanced to renew the battle when I had paſſed the rear, and ſteered upon the larboard tack. Had I a ſufficient force about me to enable me to advance faſter than I did?—No.

Was not the ſignal for the line flying all that time?—Yes.

I am charged with having wore again, and ſteered from the enemy. Was not my wearing again, and ſtanding on the ſtarboard tack, a neceſſary manœuvre for the protection of my diſabled ſhips, and for collecting my fleet together?—I think it was a very proper manœu-

vre both for the protection of the diſabled ſhips, and for collecting the fleet.

Had it the leaſt appearance of a flight?—No, certainly not.

Do you recollect what ſail I carried that afternoon, and during the night?—I cannot ſay what ſail the Victory carried, my ſtation was a-head of her, and I preſerved it under my top-ſails double-reefed, and very often with my mizen top-ſail a-back.

Did you ſee the French fleet on the morning of the 28th?—I ſaw three ſail going large, with all their ſtudding ſail ſet.

Did you ſee any ſignals not to chace them?—There were ſome pennants out, but I do not recollect what ſhips' they were.

If I had chaced with the whole fleet towards Uſhant, in the ſituation our fleet then was, was there any probability of coming up with the French fleet before they reached Breſt?—No, none.

You have heard all the articles of the charge read. I therefore deſire you to ſtate to the Court any inſtance wherein I negligently performed my duty on the 27th or 28th of July?——I can ſtate no ſuch inſtance, for I know of none. You performed every part of your duty with the utmoſt ability, and becoming a brave and gallant officer. [Withdrew.]

SIR CHARLES DOUGLAS, late Captain of the Sterling-Caſtle, now of the Duke.

Admiral Keppel. Did the French fleet ſhew any intention of coming to battle from the 24th of July to the 27th, or did they endeavour to avoid it?—By no means, to the beſt of my recollection, but ever did their utmoſt endeavour to avoid it.

Did I uſe every effort as an officer to bring them to battle?—To the beſt of my knowledge, with unremitting aſſiduity.

If you had commanded a Britiſh fleet in a ſimilar ſituation, would you have heſitated a moment to have led it down to battle on account of wind and weather on any of thoſe days?—Had I had the honour of commanding a Britiſh fleet in ſimilar circumſtances, I would not have deſired a better opportunity than daily offered on the French doubling up towards me, after attempting to bring them to action.

What in your opinion would have been the conſequence if I had formed the line of battle inſtead of cloſing with them as I did?—— Judging of their further conduct from their paſt, I do not think it would have been poſſible to have brought them to action at all; and even without forming the line, had it not been for the ſhift of wind, we ſhould not have been able to have reached within cannon-ſhot of any part of their fleet.

How many ſhips had the Vice-Admiral of the Red advancing with him on the larboard tack, after the action?—I do not poſitively recollect. I followed him in the Stirling-Caſtle, towards the rear.

I am charged with hauling down the ſignal for battle, and preventing the Vice-Admiral of the Red from renewing the engagement on the larboard tack; I deſire you to inform the Court what would have

have been the conſequence, if, by keeping abroad that ſignal, I had ordered the Vice-Admiral of the Red to renew the action at that time?—To the beſt of my judgment, ſuch a meaſure would have been attended with very diſadvantageous circumſtances, ſuch part of the Red diviſion not being a ſufficient force to have attacked all the French fleet, and moreover not being cloſed up with one another.

Did my wearing again to the ſouthward appear a neceſſary manœuvre, or had it the appearance of a flight?—Your wearing to the ſouthward did at that time appear to me a neceſſary meaſure, nor had it ſurely by any means an appearance of a flight, nor did it ever, in the ſmalleſt degree, make any impreſſion upon me to that effect.

What ſail did you carry in the night?—To the beſt of my knowledge, my three top-ſails, and at times ſeveral others which were neceſſary for the ſhip, ſhe being foul and much wounded.

Did the very bad ſailing of your ſhip occaſion you to fall off aſtern of the Red diviſion, ſo as to be in the center?—No.

Did you, in the night of the 27th, and at what part of the night, order your men to quarters, on a ſhip ranging up with you, which you thought was a ſhip of the enemy?—About the firſt dawning of day, having the Berwick, my leader, in my eye, and being then actually rather upon her weather-quarter, that I might have it in my power to re-aſſume my place with more preciſion in the line of battle, I ſaw a ſhip ranging up with me in my weather quarter; not knowing who it might be, I thought it prudent to order my ſhip's company to their quarters, and renew our preparations for battle, which had been for ſome time diſcontinued.

What ſhip was it?—As the ſhips approached towards our beam, I could plainly diſcern a flag at her main-top-maſt-head, the colour of which I could not aſcertain with certainty. Paſſing further along, and no act of hoſtility having paſſed between us, I preſumed it to be the Formidable, as I was told ſhe had neither top nor peak light, nor at the bowſprit head, nor enſign flying. About this time I bore up a little, as the day opened, that I could do it with ſafety, into my more preciſe ſtation, a-head of the Courageux. The ſhip in queſtion paſſing along, until ſhe bore further forward, I obſerved her then to have a blue enſign flying. Seeing the ſhip approach in the manner deſcribed, I do confeſs I was not without ſome apprehenſion that the French had, by edging away upon the larboard-tack, doubled upon our rear, in order to regain the weather-gage; and ſeeing other ſhips in the ſame quarter of the compaſs, my ſuſpicions grew ſtronger, inſomuch that I did ruminate or entertain the idea of making the ſignal for ſeeing ſtrange ſhips in the north-weſt quarter, and had actually gone ſo far as to deliberate whether I ſhould make the night or the day ſignal, which will ſerve to aſcertain the time.

When the day came, was you then certain it was the Vice-Admiral of the Blue?——It could be no other.

On the 28th, if I had chaced with the fleet in the condition in which it was, was there the leaſt probability of coming up with the French fleet before they reached the port of Breſt?—If the French

had obſerved their former line of conduct, there was not the ſmalleſt probability.

You have heard all the articles of the charge, therefore I deſire you to ſtate to the Court any inſtance wherein I negligently performed my duty on the 27th or 28th of July?—I did not obſerve any thing done or left undone by Admiral Keppel on the 27th or 28th of July, bearing the appearance of negligence. [Withdrew.]

CAPTAIN CROSBY, late of the Centaur, called.

Admiral Keppel. What in your judgment would have been the conſequence, if I had formed the line in the morning on the 27th of July, inſtead of cloſing with them as I did?—We ſhould have increaſed our diſtance, and could not have brought on an engagement.

What would have been the conſequence, if, by keeping abroad the ſignal for the line, I had reduced the Vice-Admiral of the Red with the ſhips about him, to have re-attacked the enemy?—He had but ſix or ſeven ſhips; and I think it would have been a dangerous experiment; for, from the apparent ſituation of the fleet in general, he could not have been ſupported.

Did my wearing to ſtand to the ſouthward appear to you a neceſſary manœuvre, or had it the leaſt appearance of a flight?—As to the neceſſity of the meaſure, the Admiral was the beſt judge; and as to a flight without wings, the idea could not ſtrike me.

I deſire you to ſtate to the Court inſtances wherein I negligently performed my duty on the 27th or 28th of July?—If I am allowed to aſſume an opinion of the conduct of an Admiral ſo high in command as Admiral Keppel, from the experience that thirty years ſervice has given me, I am of opinion, and do firmly believe, that the Admiral did every thing that could be done for the good of his Majeſty's ſervice. I never had the honour of ſerving under him before; and it is one of the moſt unfortunate events of my ſervitude, that I never did ſerve under him before. [Withdrew.]

CAPTAIN NOTT, late of the Exeter, called.

Admiral Keppel. What, in your judgment, would have been the conſequence, if I had formed the line inſtead of cloſing with the enemy as I did?——You would not have got into action at all.

How many ſhips had the Vice-Admiral of the Red when on the larboard tack?—Six or ſeven at moſt.

What would have been the conſequence of keeping abroad the ſignal for battle, and ordering the Red diviſion to renew the attack? The deſtruction of the Red diviſion.

Did my wearing to the ſouthward appear to you a neceſſary manœuvre, or did it carry the appearance of a flight?—It appeared a very neceſſary manœuvre; and though I have been thirty years in the ſervice, I never ſaw an Engliſhman turn his back upon a Frenchman yet.

You

You have heard all the articles of the charge read; I therefore desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?—I can state no such instance; I had the honour of serving under you before, and it was the greatest pride of my heart, that I was commissioned to serve under you again, believing you to be the greatest Admiral in the world; and the whole of your conduct, when in sight of the French fleet, convinced me that my judgment was right. [Withdrew.]

The Honourable CAPTAIN KEITH STUART, of the Berwick.

Admiral Keppel. If I had formed the line of battle instead of closing with the French as I did, what would have been the consequence?—I apprehend they would not have been brought into action that day.

Did my wearing to the starboard tack appear to you a necessary manœuvre?——It appeared to me a necessary manœuvre; I never conceived it to be meant as a flight, but, on the contrary, I expected to be again in battle before five o'clock.

Did I make every necessary signal to collect the fleet while on that tack?—Yes.

If I had chaced towards Ushant with the fleet in the situation they were in, was there the least probability of coming up with the French fleet before they reached Brest?—I think certainly not.

I desire you to state to the Court any instance wherein I negligently performed my duty on the 27th or 28th of July?——I know of none.

TWENTY-SEVENTH DAY, MONDAY, *Feb.* 8.

THE Hon. LIEUTENANT LUMLEY, of the Robuste.

Admiral Keppel. Is the log-book you have in your hand an exact copy from the original Robuste's log-book?—Yes, Sir, with two or three additions of my own, which I put in between parentheses.

At what time were the additions made?——At the time I wrote the log.

Then Mr. Lumley's log-book will ascertain the alterations that have been made in the log-book of the Robuste, and I beg they may be compared.

The first difference on comparing them was, that the original log-book had the words "still in chace of the French fleet," which were not in the altered edition of it. In the original it stood, "A "signal for the Vice-Admiral of the Blue's squadron to give chace "to windward."—In the altered log it was, "A signal for us and "several other ships of the Vice-Admiral of the Blue's squadron to "chace to windward." The words, "at twelve, the weather more "moderate," were wanting. An addition had been made to the damages

damages ſuſtained in the engagement, which was not in the original. In the original log it ſtood, " that at ſix in the afternoon, the Ro-" buſte tacked and reſumed her ſtation in the line." But in the ſecond edition, (for the public muſt underſtand, that a leaf of this material part of the tranſactions was cut out and replaced by another) it ſtood thus: " Between ſix and ſeven o'clock obſerved a ſignal on " board the Victory for ſhips to bear down, which was repeated by " the Formidable, and in the evening we reſumed our ſtation in the " line, and continued in it as near as we could, the Admiral making " much ſail." There were many other little alterations, all convincing the Court of the direct intentions with which they had been made.

When did you firſt come upon deck in the morning of the 28th?—At three o'clock.

Was it your watch?—No. Mr. Pitt, who had the middle watch, ſent down to me, that he would be obliged to me.

Where was the Robuſte at day-light?—On the Vice-Admiral of the Red's weather-quarter, within hail of him.

What ſail had the Robuſte at that time?—The fore and main-top-maſt ſtay-ſail, and mizen-ſtay-ſail, with cloſe-reefed top-ſails.

Did you ſhorten ſail, or continue upon that ſail?——After the Firſt Lieutenant's coming on deck, and finding that it was certainly a red flag at the foremoſt of the ſhips to leeward, we hauled our main-ſail up, and backed our mizen ſtay-ſail.

Was the Vice-Admiral of the Red a-head of the centre diviſion at that time?—He was.

Croſs-Examination by Sir Hugh Palliſer.

Was you preſent when theſe corrections were made?—I was not, but I was once preſent when ſome leaves were taken out of the log-book, which made me believe that an alteration was to take place.

Can you ſpeak of the time, with any degree of preciſion, when that was done?—It was I think about the 6th of December, when the ſhip was either at Spithead, or in Portſmouth harbour.

Did you find your main-ſail ſet when you came upon deck at three o'clock?—I did.

Did you learn the occaſion of it?—Yes, I was told that after conſulting with the Captain he was obliged to carry ſo much ſail to keep a-head of the Vice-Admiral of the Blue, when he pointed out to me a-ſtern, without any lights on board; but when day-light broke, he could not diſcover the Vice-Admiral.

Mr. Arnold, Maſter of the Robuſte.

Admiral Keppel. When were the alterations made in the Robuſte's log-book?—The laſt alterations were made on the 12th of December.

At what time of the day?—Between eleven in the morning and two in the afternoon.

By whoſe orders were they made?——By Capt. Hood's.

Do

Do you know if Sir Hugh Palliſer was at Portſmouth at that time? —I do not.

Do you know where the Robuſte was at day-light on the 28th?—She was on the Queen's ſtarboard quarter, at the diſtance of two cables length.

Croſs-Examination by Sir Hugh Palliſer.

Did Captain Hood, when you made the alterations, tell you that he wiſhed for none that were not true?—He told me, on leaving the cabin, that he wiſhed for the book to be correct, and ſaid, *I ſuppoſe you can atteſt this.*

Admiral Arbuthnot. Do you know that the Admiral in Chief did carry much ſail in the night of the 27th?—I was not upon deck in the night myſelf.

Sir Hugh Palliſer. When the Captain ſaid he ſuppoſed you could atteſt the alterations, what anſwer did you make?——I anſwered, yes; thoſe parts that fell under my obſervation. [Withdrew.]

The Admiral then addreſſed himſelf to the Court, and made a few obſervations on the alterations:—Mr. Hood, in juſtification of his conduct in making thoſe alterations, ſays, that he made them in his own protection, not knowing but he might have been brought to this bar a priſoner, inſtead of an evidence. I cannot ſee how Captain Hood can reconcile the alterations he has made to this pretext.

How, Sir, could the ſignal for chacing in the morning benefit him, if made for ſeveral ſhips of the diviſion, rather than for all the diviſion?

How much leſs, that the three ſhips, in the morning of the 28th, were near, rather than far diſtant? He could not poſſibly be affected by the eſcape of three ſhips, nor could any guilt ariſe in him, from their being chaced or not chaced. Theſe are points, however, contained in my accuſer's charge, but as they do not affect me, I will not inſiſt upon them. But the one which remains behind, tending directly to affect my life, and what ought to be dearer to every Britiſh ſeaman, my honour; I muſt beg leave to take notice of it:—"More particularly as it cannot tend, in the ſmalleſt degree, to have exculpated him, had he, as he ſays, been brought to your bar."

Had the Robuſte fallen a-ſtern, indeed, there might have been ſome advantage in aſſerting that "the Admiral made much ſail." But inſtead of being found out of his ſtation a-ſtern, it has come out in proof, that in the ſpace of a ſhort night he ſtretched a-head of his ſtation ſeveral miles. It is, therefore, too evident, that the alteration was made to ſupport the charge of my accuſer. Their intimacy, their connection, tends to corroborate this ſuſpicion. I feel moſt ſenſibly for Captain Hood in this caſe; that the man with whom I lived in familiarity and friendſhip, and of whoſe bravery and merit as an officer I am well convinced, ſhould have been ſeduced by any party or perſuaſion to have deviated ſo far from that honourable line of conduct which Britiſh ſeamen ought to purſue, hurts me more than that aimed at me. And I hope it will be believed after this, that

that I have not inveſtigated this point for the ſake of myſelf, ſo much as for the ſecurity of the ſervice.

Sir Hugh Palliſer begged that he might be permitted to offer ſomething in juſtification of Capt. Hood, when Admiral Montague told him, it was not poſſible for the Court to take cognizance of the conduct of Captain Hood, and if the Vice-Admiral wiſhed to make any juſtification of his conduct, he muſt needs do it in the *Morning Poſt*, or the *General Advertiſer*.

Sir JOHN HAMILTON, Captain of the Hector.

Admiral Keppel. What in your judgment would have been t h conſequence, if I had formed the line inſtead of cloſing with the enemy as I did?—You could not have brought them to action at all.

How many ſhips had the Vice-Admiral of the Red with him when he ſtood on the larboard tack towards the enemy, after the engagement?——Six or ſeven.

What in your judgment would have been the conſequence, if by keeping the ſignal for battle abroad, or by any other ſignal, I had ordered him to advance and renew the attack?—The Vice-Admiral at that time was in a very critical ſituation, advancing towards five ſhips of the enemy's rear, and no ſhip near him but the Hector. And it is my firm opinion, if the ſignal had not been hauled down, they would certainly have been cut off.

Did my wearing at this time, and ſtanding to the ſouthward, appear a neceſſary manœuvre, or had it the appearance of a flight?—It appeared a neceſſary manœuvre, and had no appearance of flight.

If I had chaced towards Uſhant in the morning of the 28th, was there any probability that I could have come up with the French fleet before they reached Breſt?—Not the leaſt probability.

You have heard all the articles of the charge read; I therefore deſire you to ſtate to the Court any inſtance, if you know of any, wherein I negligently performed my duty on the 27th or 28th of July?—I know of none.

Croſs-Examination by Sir Hugh Palliſer.

At what time were there only five ſhips with the Vice-Admiral of the Red?—When the ſignal for battle was hauled down.

How many ſhips of the Red diviſion went with their Admiral, when they formed a-ſtern of the Victory?—About ſix ſail.

Where were the others?—Some of them to leeward, and others refitting after the action.

Do you remember ſeeing the Formidable with her head the ſame way as the Red diviſion were lying?—I do not recollect it.

The Vice-Admiral aſked him two or three queſtions, reſpecting the ſignals that were made while the Admiral was on the ſtarboard tack. To which the Admiral himſelf anſwered, "That there was no ſignal made at that time, but the ſignal for the line of battle,"—the greateſt of all ſignals.

CAPTAIN

CAPTAIN PRESCOT, of the Queen.

He depoſed, that if the Admiral had formed the line of battle, inſtead of cloſing with the enemy, in the morning of the 27th, there would have been no poſſibility of bringing the French to battle.

Admiral Keppel. What in your judgment would have been the conſequence, if by keeping abroad the ſignal for battle, or by any other, I had ordered the Vice-Admiral of the Red immediately to have renewed the battle?——I am ſenſible that Sir Robert Harland would have punctually obeyed any ſignal that you had made for him. But the conſequence muſt have been fatal, for the French, with common profeſſional knowledge or bravery, muſt have deſtroyed the whole diviſion, before you could have given them ſupport.

Capt. Preſcott ſaid, the Admiral's wearing to the ſouthward, appeared to be a very neceſſary meaſure, and i ad not, in any inſtance, the appearance of a flight. The Admiral uſed every means in his power to collect the fleet, and renew the battle on the ſtarboard tack; nor did he ſee one ſignal or movement on board the Victory, that gave him the ſmalleſt reaſon to believe, that the Admiral did not intend to renew the battle if he could have formed his line. He ſaid the Queen carried her diſtinguiſhing lights in the night, and he was truly of opinion, that there was not the ſmalleſt probability of coming up with the French fleet, on the 28th, before they had reached Breſt, being only, by his reckoning, 26 leagues diſtant from Uſhant on that day. He anſwered the Admiral's concluding queſtion in the following manner: "I cannot point out to the court any inſtance of negligence, for I know of none. Having received a great part of my naval ſkill under your command, I was taught to look up to you with a degree of ſilent reſpect; your character is too great to ſtoop to my judgment; but thus called upon, I declare, and am happy to declare upon my oath, that your conduct on theſe days added luſtre to your name, and held up a great and worthy example to all Britiſh ſeamen."

Croſs-Examination by Sir Hugh Palliſer:

What fatal conſequences were there to be apprehended, if the whole Britiſh fleet had advanced and renewed the attack?——The whole Britiſh fleet were not in a ſtate to renew the action immediately.

Were not the French advancing towards the Britiſh fleet?—Not that I ſaw.

I mean after they were formed?—At that time I apprehend the Admiral intended to have renewed the engagement; but you and your ſhips were ſo much to leeward, that he had not the power to do ſo.

Mr. WACE, Aſſiſtant-Builder in Plymouth Dock-yard, laid upon the table, on oath, accounts of the damages the fleet had received.

The Admiral's letters to Mr. Stephens, of the Admiralty, were now read, which contained every circumſtance that occurred during all the time the two fleets were in ſight of each other. Two letters from the Secretary were alſo read; in the firſt of which the entire approbation of his Majeſty on his conduct, and the congratulations of the Admiralty on his victory are contained, conceived in the higheſt terms of gratitude and thanks; in the ſecond, he receives

thanks for having ſo prudently provided for the ſecurity of our Weſt India fleets, in the appointment of Capt. Leveſon Gower, and orders to teſtify to the Captain their approbation of his conduct.

The Admiral now informed the Court he had concluded his defence, and that he would make no obſervations on his evidence, but reſt it entirely on the wiſdom and the integrity of the Court.

Sir Hugh Palliſer now addreſſed himſelf to the Court, and ſaid it was his intention to make ſome obſervations, not only on his own evidence, but alſo on the defence and the evidence of the Admiral, eſpecially as in defending himſelf he had criminated him; and as the trial had grown to ſo voluminous a bulk, it would be ſome time before he ould be prepared, and he hoped the Court would indulge him till Wedneſday for that purpoſe.

The Admiral anſwered to this, that though he had, for his own part, no objections to the proſecutor's making what obſervations he pleaſed on the evidence adduced, yet he could not help obſerving the requiſition was unprecedented in naval Courts-martial, and he conceived it would be eſtabliſhing a precedent which might, on future occaſions, be productive of very dangerous conſequences.

On this the Court retired, and on their return the following was their reſolution :—" The Court having on a former occaſion declared, that when the proſecutor had concluded his evidence, they could not receive a paper preſented to them by him; and it being now declared that the evidence on both parts is concluded, it is therefore reſolved, that nothing further can be received from either party."

TWENTY-EIGHTH DAY, THURSDAY, *February* 11.

The SENTENCE *of the* COURT-MARTIAL *on the* Honourable ADMIRAL KEPPEL.

Pronounced by the JUDGE ADVOCATE.

AT a Court-Martial aſſembled on board his Majeſty's ſhip Britannia, in Portſmouth Harbour, the 7th of January, 1779, and held by adjournment at the Houſe of the Governor of his Majeſty's Garriſon at Portſmouth every day afterwards (Sundays excepted) till the 11th of February, 1779, incluſive.

PRESENT,

PRESIDENT, Sir Thomas Pye, Admiral of the White.

Matthew Buckle, Eſq; Vice-Admiral of the Red, till the cloſe of the ſixth day, when he became unable any longer to continue his attendance on account of ſickneſs.

John Montague, Eſq; Vice-Admiral of the Red.

Marriot Arbuthnot, Eſq;
Robert Roddam, Eſq; } Rear-Admirals of the White.

CAPTAINS

CAPTAINS,

Mark Milbank,	William Bennett,
Francis Samuel Drake,	Adam Duncan,
Taylor Penny,	Philip Boteler,
John Moutray,	James Cranſton.

The Court, purſuant to an order of the Lords Commiſſioners of the Admiralty, dated the 31ſt of Dec. 1778, and directed to Sir Thomas Pye, proceeded to enquire into a charge exhibited by Vice-Admiral Sir Hugh Palliſer againſt the Hon. Admiral Auguſtus Keppel, for miſconduct and neglect of duty on the 27th and 28th of July, 1778, in ſundry inſtances, as mentioned in a paper which accompanies the ſaid order, and to try him for the ſame; and the Court having heard the evidence, and the priſoner's defence, and maturely and ſeriouſly conſidered the whole, are of opinion, that the charge is MALICIOUS and ILL-FOUNDED: It having appeared that the ſaid Admiral, ſo far from having by miſconduct and neglect of duty, on the days therein alluded to, loſt an opportunity of rendering eſſential ſervice to the ſtate, and thereby tarniſhed the honour of the Britiſh Navy, behaved as became a JUDICIOUS, BRAVE, and EXPERIENCED OFFICER.

The Court do therefore UNANIMOUSLY and HONOURABLY ACQUIT the ſaid Admiral Auguſtus Keppel, of the ſeveral articles contained in the charge againſt him, and he is hereby FULLY and HONOURABLY ACQUITTED accordingly.

GEORGE JACKSON, Judge Advocate.
THOMAS PYE, Preſident.
JOHN MONTAGUE,
MARRIOT ARBUTHNOT,
ROBERT RODDAM,
MARK MILBANK,
FRANCIS SAMUEL DRAKE,
TAYLOR PENNY,
JOHN MOUTRAY,
WILLIAM BENNETT,
ADAM DUNCAN,
PHILIP BOTELER,
JAMES CRANSTON.

(A Copy.) GEORGE JACKSON.

The Preſident then addreſſed himſelf to the Admiral in the following words, delivering to him his ſword at the ſame time:

" *Admiral Keppel,*

" It is no ſmall pleaſure to me to receive the commands of the Court I have the honour to preſide at, that, in delivering you your ſword, I am to congratulate you on its being reſtored to you with *ſo much honour*, hoping, ere long, you will be called forth by your Sovereign to draw it once more in the defence of your country."

The

The concourſe of people that ſurrounded the Court was becoming the occaſion, and was immenſe. As ſoon as the ſentence was pronounced, an acclamation of joy burſt forth in the Court, in repeated peals, which was communicated to the crowd without, and became general through the town; a ſignal gun was fired to diſpatch the tidings to Spithead, and the ſhips immediately ſaluted and cheered. The Eaſt-Indiamen at Mother-Bank fired nineteen vollies. After waiting ſome little time, the Admiral came forward, and again received the heart-felt gratulations of the multitude. He yielded to the ſolicitations of the navy at large, and walked home in proceſſion, preceded by a band of muſic, and attended by the Admirals and Captains of the fleet.

The proceſſion was as follows:

Admiral Sir Robert Harland. } The ADMIRAL. { His R. H. the D. of Cumberland.

General Keppel, Sir Edward Hughes, and Admiral Campbell.

Duke of Portland, Marquis of Rockingham, and Earl of Eſſingham,

About 60 Captains, and a great number of Maſters and Lieutenants.

Rear brought up by three Daniſh Noblemen, volunteers.

The noblemen and gentlemen had light blue ribbons in their hats, which they carried in their hands, with the word "KEPPEL" inſerted in gold letters, preſented to them for the occaſion by the Ducheſs of Cumberland, the Ducheſs of Richmond, the Marchioneſs of Rockingham, the Counteſs of Eſſingham, and other ladies of faſhion. The band played, "He comes, he comes, the hero comes," while the whole concourſe, noblemen, gentlemen in the proceſſion, and ladies from the windows, ſupplied the vocal part, and the crowd cloſed each period of the harmony with a choral cheer.

ERRATA.

Page 18, l. 31, for *lee-leech main-ſail*, r. *lee-leach of the main-ſail.*
30, laſt line, for *any part of the day*, r. *any other time.*
48, l. 10, for *crotchet*, r. *croſs-jack.*
71, l. 33, after *board* inſert a ;.
84, l. 36, for *that*, r. *than I would.*
86, l. 12, after *Did you take notice of the*, add *Formidable.*
87, l. 35, for *no*, r. *not.*
115, l. 26, for *Capt. Goodall*, r. *Capt. Sutton.*

DICTIONARY of SEA TERMS.

A.

ABACK. Sails are ſaid to be *aback* when flatted by the wind againſt the maſt.

ABAFT, } Behind; towards the ſtern; between the ſtern and the
AFT. } main-maſt.

ABOARD. Within the ſhip.

A-BREAST. By the ſide; along-ſide,

A-HEAD, Before; before the ſtem of the ſhip.

A-STERN. Behind; at the hinder part or ſtern of the ſhip.

A-THWART. A-croſs; tranſverſe; croſs a line.

B.

To BACK *the Sails*. To manage them, ſo that the ſhip may ſail backwards, or fall a-ſtern.

BACK-STAYS. Long ropes reaching from the top-maſt-head to the ſtarboard or larboard ſides of the ſhip.

BEAM. Strong pieces of timber, reaching from ſide to ſide to ſupport the decks.

Before the BEAM. In an angle between the ſhip's direct courſe and a right line line from the beam.

On the BEAM. In a right line with the beam.

Weather-BEAM. The ſide of the ſhip on which the wind blows, as *Lee-Beam* is the contrary.

To BEAR. To direct the ſhip's courſe to.

To BEAR DOWN. To ſail towards.

To BEND THE SAILS. To faſten them to the yards or ſtays.

BOOMS. Poles for the purpoſe of extending particular ſails, as the ſtudding-ſails, &c.

BOW. The rounding part of the ſhip's ſide, towards the ſtem or forepart.

Lee-BOW. The bow under the wind.

Weather-BOW. The bow againſt which the wind blows.

Starboard-BOW. The right-hand bow.

Larboard-BOW. The left-hand bow.

On the BOW. In a right line with the bow.

BOWSPRIT. A maſt projecting over the ſtem, to carry ſail forward.

BOW-LINE, } A rope faſtened to the leech or hanging edge of the
BOWLING. } ſquare-ſails by intervals, called bridles.

BRACES. Ropes uſed for the purpoſe of ſhifting the ſails, &c. generally faſtened to the extremities of the yards.

BRIG. A ſmall veſſel, in which the main-ſails run in a line with the keels, &c.

To BRING-TO. To check the courſe of the ſhip, ſo as to detain it in one ſituation.

BROADSIDE. The whole diſcharge of the guns on one ſide of the ſhip, above and below.

BUNT-LINES. Ropes faſtened ro the bottom of the ſquare-ſails, to draw them up to the yards.

C.

CABIN. An apartment for the officers.
CABLE. A large rope for the purpoſe of ſtaying a ſhip at anchor, &c.
CABLE's-LENGTH. The length of the cable, 120 fathoms.
CANVAS. Sail.
CAP. A ſtrong block of wood, made uſe of to confine maſts two together.
To CARRY MORE SAIL. To hoiſt more ſail for the purpoſe of expediting a ſhip's courſe.
To CARRY MUCH SAIL. To put out a great deal of ſail to haſten the ſhip's courſe.
CATHARPINGS. Ropes uſed to brace the ſhrouds tight.
CENTER. The middle.
To CHACE. To purſue; to ſail after with a deſign of overraking.
CHAINS. Strong links or plates of iron bolted through the ſhip's ſides to the timbers.
CHANNELS. Projecting boards on the outſide of the ſhip, to which the ſhrouds of each maſt are extended; thus there are fore, main, and mizen Channels.
CLOSE-HAULED. The general trim or arrangement of the ſails, when the ſhip is to make the neareſt progreſs to windward.
CLOSE UPON A WIND. Near the wind; near the point whence the wind blows.
COURSE. The track of ſailing.
COMPASS. An inſtrument employed to determine the ſhip's courſes, &c.
COURSES. The principal ſails.
CRIPPLED. Diſabled.
CROSS-JACK, or CRODDICK. A ſail extended on the lower yard of the mizen-maſt.
To CROUD SAIL. To carry extraordinary ſail.
CUTTER. An open boat.

D.

DECK. The floor or platform of a ſhip.
DISMASTED. Deprived of the maſts.
DIVISION. A part of a fleet under a ſeparate command.
To DOUBLE. To ſail rather beyond, and turn about.

E

To EDGE AWAY, } To decline or ſail gradually from.
To EDGE OFF. }
To EDGE DOWN. To ſail down gradually.

F.

FALL. The looſe end of a tackle.
To FALL A-STERN. To ſail back; to be driven behind.
To FALL DOWN. To ſail down as it were in a retrograde courſe.
FATHOM. Six feet.
To FETCH A SHIP. To come up with.
To FISH A MAST. To ſtrengthen it by fixing about it a concave piece of

of timber on the outſide, either when damaged, or to prevent any accident that may happen.

FORE-CASTLE. A ſhort deck in the fore-part of the ſhip, above the upper deck.

FIRE-SHIP. An old ſhip filled with combuſtibles, and fitted with grappling irons, to hook to, and ſet fire to an enemy.

FLAG. A banner, or ſtandard, on board the Admiral's ſhip for diſtinction.

FLAG-OFFICER. The ſame as an Admiral.

FORE. All that part of the ſhip which lies towards the ſtem.

To reach upon a Ship's FORE. To gain ground upon; to advance before.

FORE-SAILS. The ſails belonging to the fore-maſt.

FORE-TOP-SAILS. The ſails belonging to the fore-top-maſt.

FORE-TOP-GALLANT-SAILS. The ſails belonging to the fore-top-gallant-maſt.

FORE-MAST. The maſt which is next to the ſtem, or fore-part of the ſhip.

FORE-TOP. The platform on the top of the fore-maſt.

FORE-TOP-MAST. The ſecond diviſion of the fore-maſt.

FORE-TOP-GALLANT-MAST. The third, or upper diviſion of the fore-maſt.

FORE-TOP-MAST-HEAD. The head, or upper-end of the fore-top-maſt.

To FORM A FLEET. To range a fleet properly.

FRIGATE. A light veſſel for the purpoſe of ſailing ſwiftly.

To FURL THE SAILS. To roll them cloſe up to the yard, ſtay, or maſt, and faſten them with a line called the Furling-line.

FUTTOCK SHROUDS. Shrouds that fall back, which go from the common ſhrouds to the tops.

G.

GAMMONING. A rope that binds the inner quarter of the bowſprit to the ſtem.

GIB, or JIB. The foremoſt ſtay-ſail of a ſhip, extended from the outer end of the bowſprit to the fore-top-maſt-head.

GUNNER. An officer appointed to take charge of the artillery and ammunition.

H.

To HAIL. To call to; to ſpeak to.

HALLIARDS. Ropes and tackle employed to hoiſt or lower any ſail upon its maſt or ſtay.

HARD A LEE. When the helm is pulled to the leeward, either to tack or turn the head to windward.

HARD A WEATHER. When the helm is puſhed to windward.

To HAUL. To pull a rope without tackle, blocks, &c.

To HAUL THE WIND. To direct the courſe to windward.

To HAUL DOWN. To draw down.

HAWSER. The large rope between the cable and tow-line.

HEAD. The front or fore-part of the ſhip.

HEADMOST. Moſt a-head; foremoſt; moſt advanced.

HEAD-SAILS. The ſails of the bowſprit and foremaſt.

To HEAVE. To lift or turn by a lever.

To HEAVE THE LOG. To lift it for the purpoſe of obſerving the ſhip's courſe.

HELM. That part of the ſhip by which her courſe is directed.

To HOIST. To pull up.

HOLD. The hollow cavity between the floor and lower deck.

HOVE. Heaved, turned, or lifted.
HULL. The body of the ſhip, independant of the maſts, ſails, and rigging.

J.

JACK. A flag or enſign diſplayed on a maſt, erected on the outer end of the bowſprit.
JIB. See GIB.
JURY-MAST. An occaſional or ſpare maſt, to ſupply the place of one that is wanting.

K.

KEEL. The bottom timber of the ſhip.
KNOTS. Diviſions in the log-line to mark the rate of ſailing; thus two knots an hour are the ſame as two miles an hour.

L.

LARBOARD. The left.
LARGE. A term applied to the wind when it croſſes the line of a ſhip's courſe in a favourable direction, particularly on the beam or quarter.
To SAIL LARGE. To advance with a large wind when the ſails are ſlack.
LATITUDE. Diſtance from North or South.
To LAY-TO, } To form or manage the ſails, ſo as neither to advance or
To LIE-TO. } recede, the ſails counteracting each other.
To LAY THE HEAD TO. To ſtand towards.
LEEWARD. Towards where the wind blows; oppoſite to windward; thus if the wind be in the North, the South is to leeward.
LINE. Order or arrangement of a fleet lying head to ſtern, with their ſides parallel.
LEECH. The border or edge of a ſail.
LOG. A ſmall piece of timber, with lead ſo contrived as to ſwim upright in the water, the other end being faſtened to the log-line, a little cord furniſhed with knots or diviſions, to mark the ſhip's time of ſailing.
LOG-BOARD. A board on which the ſhip's daily occurrences are marked down, and from thence entered into the log-book.
LOG-BOOK. A book into which the occurrences on board a ſhip are written, taking them from the log-board.

M.

MAST. A long round piece or pieces of timber united, extending perpendicularly from the keel upwards, to which are joined the ſails, rigging, &c. and in large ſhips are in three ſeparate joints or diviſions, as the maſt, top-maſt, and top-gallant-maſt.
MAIN-MAST. The lower and middle maſt of a ſhip.
MAIN-TOP-MAST. The ſecond diviſion of the middle maſt.
MAIN-TOP-GALLANT-MAST. The third or upper diviſion of the main or middle maſt.
MIZEN-MAST. The maſt next to the ſtern, which has alſo its top, and top-gallant-maſt.
MAIN-SAIL. See SAIL.
MAINS. The principal ſails, yards, &c.
To MAKE SAIL. To increaſe the quantity of ſail.
MIZEN-SAILS. Sails belonging to the mizen-maſt.

MASTER

MASTER. An officer appointed to take charge of the navigating and conducting a ſhip, under the direction of the Captain.
MATE. Aſſiſtant to the maſter, ſurgeon, &c.
MAIN-TOP-SAIL. The ſail of the main-top-maſt.
MAIN-TOP-HEAD. The upper part or head of the main-top-maſt.
MIDSHIPMAN. A cadet on board a ſhip, appointed by the Captain to ſecond the orders of the officers.

O.

ORLOP. A platform of boards over the beams where the officers ſtore-rooms are placed.
To OUT-SAIL. To ſail faſter.

P.

PEAK or PEEK. A ſlope on the mizen ſail, where ſignals are hung.
PENNANT. A narrow ſtreamer, or enſign, diſplayed from the maſt-head, for the purpoſe of diſtinction, notice, &c.——This word is often, though improperly written *Pendent* or *Pendant*, which is the name of a rope fixed under the ſhrouds upon the head of the main-maſt and fore-maſt.
To PLY. The act of making a progreſs againſt the wind.
POOP. The hindmoſt deck of the ſhip.
PURSER. An officer appointed to take charge of the ſhip's proviſions.

Q.

QUADRANT. An inſtrument uſed to obſerve heights and diſtances.
QUARTER. That part of a ſhip's ſide which lies towards the ſtern, as the bow is the ſide to the ſtem.
Weather QUARTER. That quarter againſt which the wind blows.
Lee QUARTER. The quarter which lies to the leeward.
On the QUARTER. In a line with the quarter.
QUARTER-MASTER. An inferior officer appointed to aſſiſt the mates.

R.

To RAKE. To fire into the head or ſtern.
RATE. Order; degree; as to ſize, burthen, &c. thus: a firſt rate, ſecond rate, &c.
RATE. Reckoning; computation; degree; proportion.
RATTLINGS. The ſteps of the ſhrouds, placed horizontally to form a ladder.
REAR. Hinder part.
REEF. A portion of the ſail between the eyelet holes, which is gathered up occaſionally, and then the ſail is ſaid to be reefed.
To REEF *a ſail.* To roll up the ſail the diſtance of a reef, hence *double-reefed* when two reefs are pulled in, to reduce the quantity of ſail, and conſequently to impede the courſe of the ſhip.
REEF-TACKLE. A rope uſed to pull the ſkirts of the reefs cloſe up to the extremities of the top-ſail-yards, to lighten the ſails.
REEFED, applied to a maſt. When a maſt is cracked or broken, the end ſo injured is ſawed off, and the remaining part ſet up again now much ſhorter. This maſt is called a *reefed-maſt.*
To RIG. To furniſh with ropes, &c.
RIGGING. A general name for all the ropes employed about the maſts, ſails, &c.

Running

Running RIGGING. All that part of the rigging which paſſes through pullies.

Standing RIGGING. All the ropes which ſupport the maſts.

RUDDER. That part of the helm by which the ſhip is guided.

S.

SAIL. Canvas, linen, or hempen cloth, ſewed together at the ſelvedges, and edged round with a cord, faſtened to the yards and ſtays of a veſſel, for the purpoſe of navigating the ſhip; the principal are, the courſes or lower ſails, the top-ſails and top-gallant-ſails.

Each maſt has three kind of ſails, as the main-ſail, main-top-ſail, main-top-gallant ſail; ſo the fore-ſail, fore-top-ſail, fore-top-gallant-ſail, &c.

To make SAIL. To ſpread additional ſail; to expedite the ſhip's courſe.

To ſhorten SAIL. To reduce the quantity, that the ſhip may move ſlower.

To ſet SAIL. To begin to ſail; to unfurl the ſails for the purpoſe of driving the ſhips on the water.

To ſtretch SAIL. To extend the ſails to the utmoſt.

SCHOONER. A ſmall veſſel with two maſts.

To SET. To obſerve by compaſs. Applied to a ſhip.

To SET A SAIL. To expand; to looſen.

SHEET. A rope faſtened to one or both the lower corners of a ſail.

SHIFT applied to the wind, alteration; change, &c.

SHROUDS. Large ropes extended from the maſt-head to the right and left ſides of the ſhip, to ſupport the maſts, and enable them to carry ſail, &c.

Futtock SHROUDS. See FUTTOCK SHROUDS.

SIGNALS. Particular notices by hoiſting colours or lights, firing guns, rockets, &c. ſo as to be underſtood by the fleet, and are accordingly agreed upon before the fleet proceeds to ſea.

SLINGS. A rope made for the purpoſe of encircling any thing, ſo as to lift it in that manner.

STATION. Place.

To SPLICE. To join two ends of a rope together.

SPRIT-SAIL. A ſail extended by yards under the bowſprit.

SPRIT-SAIL-TOP-SAIL. A ſail extended above the ſprit-ſails above the gib-boom.

STANDING. The movement of a ſhip either advancing to or departing from.

To STAND TO. To oppoſe; to bring the ſhips ſo as to face.

STARBOARD. Right hand ſide.

STAY. A large rope faſtened from the top of one maſt to the foot of another before it, to prevent the maſt from falling backward.

To STAY A SHIP, or *to bring her on the* STAYS, is to manage the tackle and ſails ſo that ſhe cannot make any way forwards; which is done in tacking.

To miſs STAYS. To be incapable of managing a ſhip ſo as to be brought to *ſtays*.

STAY-SAIL. A triangular ſail moving upon the ſtay between the maſts, like a curtain on a rod, only ſet in favourable weather. There are, the mizen ſtay-ſail, mizen-top ſtay-ſail, and ſometimes mizen-top-gallant ſtay-ſail, between the mizen and main-maſts; between the fore and main-maſts, there are, main-ſtay-ſail, main-top-ſtay-ſails, &c.; between the fore-maſt and bowſprit are, the fore-ſtay-ſail, the fore-top ſtay-ſail, and the gib.

STEERAGE-WAY. The progreſſive motion of the ſhip.

STEM.

STEM. The fore part of a ſhip.
STERN. The hinder part of the ſhip.
STERNMOST. Moſt behind.
STERN-POST. A long ſtrait piece of timber erected at the keel to ſupport the rudder.
STUDDING SAILS. Light ſails beyond the ſkirts of the principal ſails, appearing like wings upon the yard-arms.

T.

TACK. A rope on each ſide uſed to confine the foremoſt lower corners of the courſes and ſtayſails in a fixed poſition, when the wind croſſes the ſhip's courſe obliquely, by the uſe of which the courſe of the ſhip may be changed.
To TACK. To change the courſe from one board to another, from left to right, or from right to left.
TACKLE. A machine for the purpoſe of raiſing any weight, to ſupport the maſt, to extend the ſails, rigging, &c.
TOP-MAST. The ſecond diviſion of a maſt.
TOP-GALLANT-MAST. The third or upper diviſion of a maſt.
TOP-SAILS and TOP-GALLANT-SAILS. The ſails of the top-maſt and top-gallant-maſt.

V.

VAN. The front; the diviſion which leads the attack.
To VEER. To change the courſe.
To UNBEND THE SAILS. To take them off from the yards and ſtays.
UPPER-WORKS. All that part of a ſhip above the water.

W.

WAKE. The track which the ſhip makes in ſailing.
WAY. The ſhip's courſe, or progreſs.
To WEAR. To turn round for the purpoſe of ſailing.
WEATHER-BOW. } See Bow and QUARTER.
WEATHER-QUARTER. }
WEATHER-GAGE. Situation to windward; advantage of the wind.
WHALE, or WALE. An aſſemblage of planks at different heights to ſtrenghen the decks, forming the curves on the ſides of the ſhip.
To WEATHER A FLEET. To ſail to windward of.

Y.

YARD. A long piece of timber to extend the ſails.
YARD-ARM. The projecting ends of the yards.
To brace the YARDS. To traverſe them about the maſts, ſo as to form greater or leſſer angles with the ſhip's length.
To ſquare the YARDS. To make them hang on right angles with the keel or maſts; or to make them of greater length.
YARD-TACKLE. The tackle employed for the purpoſe of directing the yards.

THE END.

APPENDIX,

The CORRESPONDENCE *between the Honourable* AUGUSTUS KEPPEL, *Admiral of the Blue, and* PHILIP STEPHENS, *Esq; Secretary to the Admiralty.*

SIR, *Admiralty-Office, Dec.* 9, 1778.

SIR HUGH PALLISER, Vice-Admiral of the Blue ſquadron of his Majeſty's fleet, having in his letter of this day's date tranſmitted to my Lords Commiſſioners of the Admiralty, a charge of miſconduct and neglect of duty againſt you, on the 27th and 28th of July, 1778, in divers inſtances therein mentioned, and deſired that a Court-Martial may be held for trying you for the ſame; and their Lordſhips intending that a Court-Martial ſhould be held for that purpoſe, I have it in command from them to ſend you herewith a copy of the ſaid charge, that you may be preparing for your defence. I have the honour to be, Sir,

Your moſt obedient humble ſervant,

Hon. Auguſtus Keppel, PH. STEPHENS.
Admiral of the Blue, &c.

SIR, *Audley-Square, Dec.* 10, 1778.

I have received your letter of yeſterday's date, informing me, "That Sir Hugh Palliſer, &c. [*the above letter repeated.*] I muſt beg of you to inform their Lordſhips, that to ſo very extraordinary a proceeding I can for the preſent only ſay, that I muſt take ſome time for conſideration before I can return any other anſwer, than that I have received your letter.——I am, Sir,

Ph. Stephens, Eſq. Your humble ſervant, A. K.

SIR, *Audley-Square, Thurſday night, Dec.* 10, 1778.

THE very extraordinary contents of your letter of laſt night made it impoſſible for me on a ſudden to make any other anſwer, than a bare acknowledgment of having received it; but it has not required much time to determine me, in juſtice to my own reputation, to inform you, that I am willing to meet a Court-Martial whenever the Board of Admiralty ſhall think proper to order me.

At the ſame time, Sir, I deſire you will repreſent to the Lords Commiſſioners my utter aſtoniſhment at the countenance their Lordſhips have ſo far given to this proceeding, as to reſolve, on the ſame day on which ſuch a charge is exhibited, to order a Court-Martial againſt the Commander in Chief of the fleet, on an attack from an inferior officer, under all the very peculiar circumſtances in which Sir Hugh Palliſer now ſtands.——I am, Sir,

Ph. Stephens, Eſq. Your humble ſervant, A. K.

SIR, *Audley-Square, Dec.* 11, 1778.

YOUR letter of the 9th, giving me notice to prepare for my defence at a Court-Martial, makes it neceſſary for me to deſire of their Lordſhips, that Captain Jervis, of his Majeſty's ſhip Foudroyant, Captain Marſhall, of his Majeſty's ſhip Arethuſa, and Sir William Burnaby, Captain of his Majeſty's ſhip Milford, may not be ordered to ſea before the Court-Martial is held,

I may have occaſion to call many officers and perſons belonging to other ſhips not ordered to ſea; the evidence of the Captain and Firſt Lieutenant of his Majeſty's ſhip the Fox I ſhould be glad to have; but as the time of the return of thoſe gentlemen to England is uncertain, I will not, on that account, protract the aſſembling of the Court-Martial. I am, Sir, your humble ſervant,

Ph. Stephens, Eſq. A. K.

SIR, *Admiralty-Office, Dec.* 11, 1778.

I received yeſterday afternoon your letter of the 10th inſtant, acknowledging the receipt of mine of the 9th, tranſmitting a copy of the charge exhibited againſt you by Vice-Admiral Sir Hugh Palliſer, and this morning I received your letter dated laſt night, intimating that you are willing to meet a Court-Martial whenever the Board of Admiralty ſhall think proper to order one; and having without loſs of time laid the ſame before my Lords Commiſſioners of the Admiralty, I am commanded by their Lordſhips to acquaint you, that they propoſe to order a Court-Martial to be aſſembled on Thurſday, the 7th of January next, if you think you ſhall be ready with your evidence by that time; but if not, their Lordſhips will order it to be held on a later day.

As to the aſtoniſhment you expreſs at the countenance you conceive their Lordſhips have given to this proceeding, by reſolving, on the ſame day on which the charge was exhibited, to order a Court-Martial, their Lordſhips command me to acquaint you, that they know of no inſtance in which the Board of Admiralty, upon receiving a ſpecific charge of ſuch a nature, ſigned by an officer of rank, ſerving under the party accuſed, and accompanied with the requeſt of aſſembling a Court-Martial thereupon, have delayed coming to a reſolution to order one; nor would they have thought themſelves juſtified, if they had heſitated to take the neceſſary ſteps for bringing the matter to an early and legal deciſion.

I have the honour to be, Sir,

Your moſt obedient humble ſervant,

Hon. Admiral Keppel, Town. PH. STEPHENS.

SIR, *Admiralty-Office, 12th Dec.* 1778.

HAVING laid before my Lords Commiſſioners of the Admiralty your letter of yeſterday's date, deſiring that Captain Jervis of the Foudroyant, Captain Marſhall of the Arethuſa, and Sir William Burnaby, Captain of the Milford, may not be ordered to ſea till a Court-Martial has been held for your intended trial; and repreſenting that you may have occaſion to call many officers and perſons belonging to other ſhips not ordered to ſea, and that you ſhould be glad to have the evidence of the Captain and Firſt Lieutenant of his Majeſty's late ſhip the Fox; but as the return of theſe gentlemen to England is very uncertain, you will not on that account protract the aſſembling of the Court-Martial; I am in return commanded by their Lordſhips to acquaint you, that in order to comply with your requeſt reſpecting the Captains Jervis, Marſhall, and Sir William Burnaby, they will appoint other officers to command their ſhips till the trial is over; that if you will tranſmit to their Lordſhips a liſt of ſuch other officers and perſons as you may have occaſion to call upon, they will in like manner appoint others to ſupply their places, that you may not be deprived of their evidence, nor the

the public of the uſe of the ſhips to which they belong; and with reſpect to the Captain and Firſt Lieutenant of the Fox, I am to acquaint you, that their Lordſhips will take every method in their power to have them exchanged, or to obtain permiſſion for them to come to England upon their parole as ſoon as poſſible.

I have the honour to be, Sir,

Your moſt obedient humble ſervant,

Hon. Admiral Keppel, Town. PH. STEPHENS.

SIR, *Audley-Square, Dec.* 12, 1778.

IN anſwer to ſo much of your letter of yeſterday, informing me that the Lords Commiſſioners of the Admiralty propoſe to order a Court-Martial to be aſſembled on Thurſday the 7th of January next, if I am ready with my evidence by that time, you will pleaſe to inform their Lordſhips, I ſhall be perfectly ready to meet the Court-Martial at the time fixed, provided the evidences mentioned in the liſt that accompany this can be aſſembled; others that occur to me I ſhall tranſmit you the names of from time to time; but I muſt beg leave to obſerve, and wiſh you would pleaſe to communicate to their Lordſhips, that the evidence of the Captain and Firſt Lieutenant of his Majeſty's late ſhip the Fox will be ſo material to me, I hope and deſire that effectual means may be taken to get thoſe gentlemen to England in time.——I am, Sir,

Ph. Stephens, Eſq. Your humble ſervant, A. K.

SIR, *Admiralty-Office, Dec.* 14, 1778.

HAVING laid before my Lords Commiſſioners of the Admiralty your letter of the 12th inſtant, incloſing a liſt of evidence whom you deſire to attend the Court-Martial which is propoſed to be held for your trial on the 7th of January next, as alſo your two letters of this day's date, deſiring that all the Lieutenants and Warrant Officers (except the boatſwain, gunner, and carpenter) who were on board his Majeſty's ſhip Foudroyant, the 27th of July laſt, may be kept at home as neceſſary evidences at the ſaid Court-Martial; I am commanded by their Lordſhips to acquaint you, that the neceſſary directions will be given, that the evidences above-mentioned may be forth-coming.——I have the honour to be, Sir,

Your moſt obedient, humble ſervant,

Hon. Auguſtus Keppel, Admiral of the Blue, &c. Town. PH. STEPHENS.

SIR, *Audley-Square, 16th Dec.* 1778.

MY counſel having informed me, that before they can give me the beſt advice in their power upon the charge of Sir Hugh Palliſer, it will be neceſſary for them to ſee the whole of my inſtructions and correſpondence with you; and that it may be neceſſary to produce the whole or part of them before the Court-Martial, I deſire you will acquaint the Lords Commiſſioners of the Admiralty therewith.

I am, Sir, your humble ſervant,

Ph. Stephens, Eſq. A. KEPPEL.

SIR, *London, Dec.* 17, 1778.

I incloſe you a letter I received this day from Capt. Rowley, and in compliance with his requeſt, I have only to beg you to acquaint their Lordſhips that I am not in the leaſt deſirous to give interruptions to the objects of the ſtate, but to hope that the Court-

Martial may be brought forward without interruption to the public ſervice on my part. Captain Rowley has therefore my conſent to proceed upon the ſervice he was appointed to.

I am, Sir, your moſt humble ſervant,

Ph. Stephens, Eſq. A. K.

DEAR SIR, *Wimering, near Portſmouth, 16th Dec.* 1778.

BY a letter I received from Lord Mulgrave, dated the 19th, he informs me you have deſired I may be detained, as you want me as an evidence. The Monarch was at a very great diſtance from the centre or the rear, ſhe being one of the firſt ſhips that begun the action; and being employed with giving orders concerning the ſhip I commanded, I cannot therefore know much of ſignals, &c. If you can diſpenſe with my evidence, it will be doing me a ſingular mark of your friendſhip, having got the command of the ſquadron, and every thing fixed to go to the Weſt-Indies; but if you think I can after this be of any ſervice, I beg you will make uſe of me, who is, dear Sir, Your much obliged, and obedient ſervant,

JOSEPH ROWLEY.

SIR, *Admiralty-Office, 18th Dec.* 1778.

I received and loſt no time in laying before my Lords Commiſſioners of the Admiralty your letter of the 16th inſtant, reſpecting the communication of your inſtructions, and correſpondence with me to your counſel, and perhaps to the Court-Martial that is to be aſſembled for your trial. I was in hopes I ſhould have been enabled by this time to have ſent you their Lordſhips anſwer thereto; but as the inſtructions to which you allude are of a very ſecret nature, and were given in purſuance of his Majeſty's commands, ſignified by one of his principal Secretaries of State, it is neceſſary that their Lordſhips ſhould receive his Majeſty's farther commands, before they can with propriety give you a full anſwer to your letter. Their Lordſhips are perſuaded, in the mean time, you will not communicate thoſe inſtructions to any perſon whatſoever, and they command me to aſſure you, that you ſhall have their further anſwer with as little delay as poſſible. I am, Sir,

Your moſt obedient humble ſervant,

Hon. Admiral Keppel, London. PH. STEPHENS.

SIR, *Admiralty-Office, 21ſt Dec.* 1778.

MY Lords Commiſſioners of the Admiralty having acquainted Lord Viſcount Weymouth, his Majeſty's principal ſecretary of ſtate, with your having been informed by your counſel, that before they could give you the beſt advice in their power upon the charge of Sir Hugh Palliſer, it would be neceſſary for them to ſee the whole of your inſtructions and correſpondence with this office; and that it might be neceſſary to produce the whole or part of them at the Court Martial; and my Lords having at the ſame time deſired his Lordſhip to ſignify his Majeſty's commands with reſpect thereto, his Lordſhip has in return informed them, that it is his Majeſty's pleaſure they ſhould ſignify to you, that you muſt be ſenſible that there are parts of your inſtructions which cannot be divulged without great detriment to the ſtate. I am commanded by their Lordſhips to ſignify the ſame to you accordingly, and to inform you in further anſwer to your letter of the 16th inſtant, that they cannot conſent that the whole of your ſaid inſtructions, and the correſpondence above

the

mentioned, ſhould be laid before your counſel, or be produced at the Court-Martial; but if you will point out any parts of the ſaid inſtructions or correſpondence which in your opinion have any relation to the operations of the fleet on the 27th and 28th of July laſt, you will be permitted to make uſe of them in the manner you deſire, if there ſhall appear to be no objections of the nature above-mentioned.——I have the honour to be, with great regard, Sir,

Your moſt obedient, humble ſervant,

Hon. Auguſtus Keppel. PH. STEPHENS.

SIR, *Audley-Square, Dec.* 23, 1778.

I HAVE received your letter of the 21ſt inſtant, in which you inform me that the Lords Commiſſioners of the Admiralty had acquainted Lord Weymouth, one of his Majeſty's principal Secretaries of State, with the contents of my letter to you of the 16th. That his Lordſhip has in return informed them, "That it is his Majeſty's pleaſure "they ſhould ſignify to me that I muſt be ſenſible there are parts of "my inſtructions which cannot be divulged without great detriment "to the State, and that the Lords Commiſſioners of the Admiralty "had ordered you to inform me, that they cannot conſent that the "whole of my inſtructions and correſpondence with you ſhould be laid "before my counſel, or be produced at the court-martial; but that "if I will point out any parts of the ſaid inſtructions or correſpon-"dence, which in my opinion has any relation to the operation of "the fleet on the 27th or 28th of July laſt, I ſhall be permitted to "make uſe of them in the manner I deſire, if there be no objections "of the nature above-mentioned."—

I am alſo to acknowledge the receipt of your letter of the 18th, in which you inform me, "That it was neceſſary their Lordſhips ſhould "receive his Majeſty's farther commands, before they could with "propriety give me a full anſwer to my letter; and that their Lord-"ſhips were perſuaded that in the mean time I would not commu-"nicate thoſe inſtructions to any perſon whatſoever." In anſwer to which, I muſt deſire you will acquaint their Lordſhips, that I neither have made, nor will make any unneceſſary communications of my inſtructions, nor are even my counſel yet apprized of any part of them. But in anſwer to your letter of the 21ſt, I muſt beg of you to inform their Lordſhips, that they have totally miſunderſtood my letter of the 16th, if they imagined that, when put upon my trial for the defence of my life and honour, I could think of aſking any permiſſion to produce before the court which is to try me, any circumſtance which in my own opinion, or that of my counſel, may in any degree be uſeful for my defence. No, Sir, my letter of the 16th was not to aſk leave to do what by every rule of juſtice is my right. In reſpect to the laſt paragraph of your letter of the 24th, "That if I will point "out any parts of ſuch inſtructions or correſpondence which in my "opinion has any relation to the operations of the fleet on the 27th "and 28th of July laſt, I ſhall be permitted to make uſe of them in "the manner I deſire, if there ſhall appear no objections of the na-"ture above-mentioned," I can only ſay, that I conceive that my inſtructions, and every part of them, muſt neceſſarily have relation to the operations of the fleet on the 27th and 28th of July laſt, and on every day it was acting under my command, and that I was acting under thoſe inſtructions. As to my pointing out the particular parts which I conceive may be moſt uſeful to me, and opening my defence

to

to that Board of whoſe conduct towards me in this buſineſs I have reaſon to complain, where the accuſations againſt me originated, and where my accuſer has a ſeat, it cannot on reflection be expected, nor can I believe their Lordſhips intend, that when they put me on my trial, they are to limit me by their diſcretion in the uſe of ſuch means as I may think expedient for my defence, and that they propoſe to diſtreſs me by ſuch an alternative as that I muſt neceſſarily (according to their ſtatement) either bring detriment on the State, or prejudice to my own juſtification.

I am, Sir, your very humble Servant,

Ph. Stephens, Eſq. A. K.

SIR, *Audley-Square, 24th Dec.* 1778.

THE evidence of Captain Windſor, and of the Firſt Lieutenant of his Majeſty's late ſhip the Fox, I conſider ſo material at the court-martial to be held for my trial on the 7th of next month, that I cannot help troubling you again on that head, and to beg to be informed whether ſuch ſteps have been taken, as to inſure their arrival in England in time.

At preſent it does not occur to me that I ſhall have occaſion to call for the evidence of any of the officers of the Monarch, therefore do not wiſh any of them to be detained from the ſervice they are going upon. I am, Sir, your humble ſervant,

Ph. Stephens, Eſq. A. K.

SIR, *Admiralty-Office, 24th Dec.* 1778.

HAVING received and read to my Lords Commiſſioners of the Admiralty your letter of this day, deſiring to be acquainted with the ſteps which their Lordſhips have taken to inſure the arrival of Capt. Windſor, and the Firſt Lieutenant of the Fox, in time to give evidence on your trial on the 7th of next month; in return I am commanded by their Lordſhips to acquaint you, in addition to what is mentioned in the letter I had the honour to write you on the 12th inſtant, concerning theſe witneſſes, that their Lordſhips, on the ſame day, deſired Lord Weymouth, one of his Majeſty's principal Secretaries of State, to take ſuch meaſures as ſhould appear to him to be proper for the procuring their appearance at the time afore-mentioned; and I am now further to inform you, it is nottheir Lordſhips' intention that the court ſhall ſit until the effects of the afore-mentioned application is known. Their Lordſhips obſerve what is mentioned in your afore-mentioned letter about excuſing the attendance of the officers of the Monarch. I am, Sir, your moſt obedient humble ſervant,

Hon Admiral Keppel. PH. STEPHENS.

SIR, *Audley-Square, Dec.* 26, 1778.

I RECEIVED yeſterday your letter of the 24th, in anſwer to mine to you of the ſame day, informing me, that in addition to what is mentioned in your letter of the 12th inſtant, concerning the attendance of Capt. Windſor, and the Firſt Lieutenant of his Majeſty's late ſhip Fox, at the court-martial to be held for my trial on the 7th of next month, that their Lordſhips, on the ſame day, deſired Lord Weymouth, one of his Majeſty's principal Secretaries of State, to take ſuch meaſures as ſhould appear to him to be proper for procuring their appearance at the time afore-mentioned; and further to inform me it is not their Lordſhip's intention that the court ſhall ſit until the effects of the afore-mentioned application is known. This

This information leads me to apprehend a poſſibility of the enquiry being put off, and any delay, I much fear, will be productive of ſerious detriment to my country, in detaining ſo many other officers from the public ſervice.—From this conſideration I remain of opinion, that the evidence of Captain Windſor and of his Lieutenant, may be material at the trial, I muſt repeat what I wrote to you in my letter of the 11th inſtant, that from the uncertainty of the return of thoſe gentlemen to England, it is my wiſh not to have the court-martial put off on that account.

I am, Sir, your humble ſervant,

Ph. Stephens, Eſq. A. K.

SIR, *Admiralty-Office, 27th Dec.* 1778.

HAVING laid before my Lords Commiſſioners of the Admiralty your letter of the 23d inſtant, their Lordſhips, in anſwer to that part of it which relates to the accuſation againſt you, command me to inform you, that the accuſation did not originate from their Board, but from Sir Hugh Palliſer, whoſe attendance there has been diſpenſed with ever ſince.

Their Lordſhips having already communicated to you his Majeſty's pleaſure with regard to your ſecret inſtructions, cannot think it neceſſary to ſay any thing further to you upon that ſubject.

I have the honour to be, Sir,
your moſt obedient humble ſervant,

Hon. Auguſtus Keppel, PH. STEPHENS.
Admiral of the Blue, &c.

SIR, *Admiralty-Office, 27th Dec.* 1778.

VICE-ADMIRAL Sir Hugh Palliſer having, in his letter of yeſterday's date, acquainted my Lords Commiſſioners of the Admiralty, that as the witneſſes will be aſſembled at your trial, he ſhall be ready as ſoon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, 1778; and he having therefore deſired that their Lordſhips will be pleaſed to require you to give in your charge as ſoon as may be, if you have any to make againſt him, I am commanded by their Lordſhips to ſend you herewith a copy of the ſaid letter, and to ſignify their direction, that if you have any thing to charge againſt the conduct of Vice-Admiral Sir Hugh Palliſer, you do tranſmit the ſame to their Lordſhips as ſoon as may be.

I have the honour to be, Sir,
your moſt obedient, humble ſervant,

Hon. Admiral Keppel. PH. STEPHENS.

SIR, *Admiralty, 26th Dec.* 1778.

AS the witneſſes will be aſſembled at the trial of the Honourable Admiral Keppel, I beg leave to acquaint the Lords Commiſſioners of the Admiralty, that I ſhall be ready, ſo ſoon as that trial is over, to vindicate my own conduct and behaviour on the 27th of July 1778: I therefore deſire their Lordſhips will be pleaſed to require Admiral Keppel to give in his charge as ſoon as may be, if he has any to make againſt me. I am, Sir, your moſt obedient humble ſervant,

Ph. Stephens, Eſq. HUGH PALLISER.

SIR,

SIR, *Audley-Square, Sunday Afternoon. 27th Dec. 1778.*

I HAVE to acknowledge the receipt of your letter of this day's date, incloſing a letter from Sir Hugh Palliſer, acquainting the Lords Commiſſioners of the Admiralty, that as the witneſſes will be aſſembled at my trial, he will be ready, as ſoon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, and deſiring that their Lordſhips will be pleaſed to require me to give in my charge as ſoon as may be, if I have any to make againſt him; in conſequence of which, their Lordſhips are pleaſed to direct, that if I have any thing to charge againſt the conduct of Sir Hugh Palliſer, I do tranſmit the ſame to their Lordſhips.

I deſire you will expreſs to the Lords Commiſſioners of the Admiralty my great ſurprize at the contents of theſe letters: I learn, by another letter you have favoured me with of the ſame date, that Sir Hugh Palliſer's attendance at the board has been diſpenſed with ever ſince he exhibited his charge againſt me. He appears to me, however, to think that he has loſt no part of his weight and influence at the board, when he preſumes to deſire their Lordſhips to require me, in my preſent ſituation, to employ a thought about him, in any other character than as the author of that charge; and, for the preſent at leaſt, I muſt be excuſed declining to give any other anſwer to your letter. I am, Sir, your humble ſervant,

Ph. Stephens, Eſq. A. K.

SIR, *Admiralty-Office, 29th, Dec. 1778.*

I HAVE laid before my Lords Commiſſioners of the Admiralty, your letter of the 26th inſtant, expreſſing your apprehenſions that the enquiry into your conduct may be put off on account of the non-attendance of Capt. Windſor and Lieutenant Bertie, of his Majeſty's late ſhip the Fox, which you fear may be productive of ſerious detriment to your country, by detaining ſo many other officers from the public ſervice, and therefore repeating what you had written in a former letter, that, from the uncertainty of the return of thoſe gentlemen to England, it is your wiſh not to have the court-martial put off on that account, I am commanded by their Lordſhips to acquaint you, that, in conſequence thereof, the court-martial will be ordered to be held on the 7th of next month.

I am, Sir, your moſt obedient humble ſervant,

Hon. Admiral Keppel. PH. STEPHENS.

By the Commiſſioners for executing the Office of Lord High Admiral of Great-Britain and Ireland, &c.

WHEREAS, by our order of this day's date, we have directed Sir Thomas Pye, Admiral of the White, and Commander in chief of his Majeſty's ſhips and veſſels at Portſmouth and Spithead, to aſſemble a court-martial on Thurſday the 7th day of next month, to enquire into what is ſet forth in the chagre which has been exhibited againſt you by Vice-Admiral Sir Hugh Palliſer, and to try you for the ſame, provided the witneſſes on your part and his ſhall then be ready, or if not, as ſoon afterwards as they ſhall be ſo; and whereas we have therefore thought it fitting, that you ſhall be ſuſpended from your employment as Commander in Chief of a ſquadron of his Majeſty's ſhips employed and to be employed in the Channel, Soundings, or wherever elſe his Majeſty's ſervice ſhall require; you are hereby

ſuſpended

ſuſpended from your ſaid employment accordingly. Given under our hands the 31ſt day of December, 1778.

SANDWICH, J. BULLER, LISBURN.

To the Honble. Auguſtus Keppel, Admiral of the Blue, &c.

By Command of their Lordſhips, PH. STEPHENS.

SIR, *Admiralty-Office, Jan.* 1, 1779.

MY Lords Commiſſioners of the Admiralty having by their order of yeſterday's date, directed Vice-Admiral Sir Hugh Palliſer to ſtrike his flag and come on ſhore; I am commanded by their Lordſhips to acquaint you therewith, and have the honour to be, Sir,

your moſt humble ſervant,

Honble. Auguſtus Keppel. PH. STEPHENS.

SIR, *Audley-Square, 2d Jan.* 1779.

I AM unwilling to produce any inconveniencies to the public ſervice, by deſiring the Earl of Sandwich to attend the whole of my trial, which will probably run into great length. At the ſame time, I conceive his Lordſhip may be a material witneſs for me when I come to my defence; I therefore deſire you will give him notice that I deſire his attendance at the ſaid trial, and that he will produce, on that occaſion, all and every ſuch letter and letters as were written to him by Vice-Admiral Sir Hugh Palliſer, from the 27th of July, to the time of my ſailing from Portſmouth the 23d of Auguſt laſt, that ſuch may be called for as I may judge material.—I ſend this notice before the commencement of the trial, that no objection may be taken on that account; but, as I intimated before, I don't wiſh that Lord Sandwich ſhould be detained at Portſmouth any longer than is neceſſary, and therefore I ſhall give him timely notice before I ſhall want to call him. I am, Sir, your moſt obedient humble ſervant,

Ph. Stephens, Eſq. A. KEPPEL.

SIR, *Audley-Square, 2d Jan.* 1779.

THE Provoſt Marſhal, who was directed by the Lords Commiſſioners of the Admiralty to take me into his cuſtody, informed me, that, as their Lordſhips do not mean to give me unneceſſary trouble, he was permitted to take my word of honour for my appearance at Portſmouth on the 7th of this month; I have given him my word of honour accordingly, and am this day ſetting out upon my journey thither, of which I deſire you will inform their Lordſhips—

And likewiſe, I deſire you will acquaint them, I beg to be informed whether the flag officers of the fleet who were commanding at the Nore, in the Downs, and at Plymouth, at the time their Lordſhips received the charge againſt me, have all of them been choſen by their Lordſhips to be at Portſmouth, in a ſituation to ſit at my trial. I am, Sir, your very humble ſervant,

Ph. Stephens, Eſq. A. KEPPEL.

SIR, *Portſmouth, 4th Jan.* 1779.

I MADE an early application to the Lords Commiſſioners of the Admiralty, after being acquainted by Mr. Secretary Stephens, that their Lordſhips intended that a court-martial ſhould be held for trying me on a charge of miſconduct and neglect of duty, on the 27th and 28th of July laſt, exhibited againſt me by Vice-Admiral Sir Hugh Palliſer, that the Captains of the King's ſhips ſerving in the fleet under my command, on the 27th of July, might be ſummoned, and likewiſe other officers; and ſince having notice given me, that the

court-martial is ordered to be aſſembled for my trial, on Thurſday the 7th inſt. and that you are to act as Judge Advocate at the ſaid trial; I therefore think it proper to acquaint you, that I deſire the witneſſes whoſe names are inſerted in the liſt that accompanies this, may be ſummoned to attend to give their evidence before the court. Others that occur to me, that I may have occaſion to call for, I will tranſmit to you their names in time, as I may judge their evidence material or neceſſary.—You will obſerve in the liſt of witneſſes, the names of the Hon. Capt. Windſor, and Lieut. Bertie, late of his Majeſty's ſhip the Fox.—Mr. Secretary Stephens has acquainted me, in conſequence of my application to the Lords Commiſſioners of the Admiralty, that they have deſired Lord Weymouth, one of his Majeſty's principal Secretaries of State, to take ſuch meaſures as ſhould appear to him to be proper for procuring their appearance at my trial.—Though the evidence of thoſe gentlemen may be material, I have informed their Lordſhips, through Mr. Stephens, that ſhould they not arrive by the day fixed for the aſſembling the court-martial, I do not deſire it may be put off on that account; however, I ſhall be glad to know from you, Sir, the reſult of the meaſures taken for their return to England, and if they are likely to be here by the 7th inſtant.—I beg likewiſe to be informed if there is any objection to the Captains ſitting as members of the court-martial to be held for my trial, who have been ſummoned as witneſſes either by me or Sir Hugh Palliſer.

I am, Sir, your very humble ſervant,

George Jackſon, Eſq; Judge Advocate. A. KEPPEL.

SIR, *Admiralty-Office, 4th Jan.* 1779.

I THIS afternoon received, by the hands of Mr. Moore, your letter of the 2d inſtant, deſiring me to give the Earl of Sandwich notice, that you deſire his attendance at your trial; and that he will produce, on that occaſion, all and every ſuch letter and letters as were written to him by Vice-Admiral Sir Hugh Palliſer from the 27th of July to the time of your ſailing from Plymouth the 23d of Auguſt laſt, that ſuch may be called for as you may judge material; and in return, I am to acquaint you, that I immediately communicated the ſame to his Lordſhip.——I am, Sir,

Your moſt obedient, and moſt humble ſervant,

Hon. Auguſtus Keppel. PH. STEPHENS.

SIR, *Portſmouth, 5th Jan.* 1779.

I AM to acknowledge the receipt of the letter you yeſterday honoured me with, incloſing a copy of one you had written to the Secretary of the Admiralty, deſiring that the Earl of Sandwich might have notice to attend at your trial; and take leave to acquaint you, in return, that I laſt night wrote to his Lordſhip, to apprize him of your intention, agreeable to the requeſt made in your ſaid letter.—I am, with regard and conſideration, Sir,

Your moſt faithful, and moſt obedient ſervant,

Hon. Admiral Keppel. GEO. JACKSON.

SIR, *Portſmouth, 5th Jan.* 1779.

I HAD the honour of your letter of yeſterday, incloſing a liſt of the names of witneſſes whom you deſire may be ſummoned to give evidence upon your trial, and ſhall not fail to give the neceſſary notices accordingly.—I could not, upon the queſtions you are pleaſed to put to me reſpecting the return to England of Capt. Windſor and Lieutenant Bertie, avoid referring myſelf to the Secretary of the Admiralty

Admiralty for information. I was ſet down to inform you I had taken that ſtep, when luckily I received by a meſſenger a letter from him, in which he acquaints me that thoſe gentlemen are arrived.

With regard to your other directions, whether witneſſes may ſet as members of the Court-Martial, not conceiving myſelf to be fully competent on that matter, I beg to reſerve myſelf till I have ſeen and talked with the Preſident, which I ſhall endeavour to do as early this morning as I poſſibly can.——I am, with great regard and conſideration, Sir,

Your moſt faithful, and moſt obedient ſervant,

Hon. Admiral Keppel, &c. GEO. JACKSON.

SIR, *Admiralty-Office, 4th Dec.* 1779.

I HAVE communicated to my Lords Commiſſioners of the Admiralty your letter of the 2d inſtant, acquainting them, that you have given your word of honour to the Provoſt Marſhal to be at Portſmouth on the 7th inſtant, at the Court-Martial to be held for your trial; you was about to ſet out for that place, and deſiring to be informed, whether the flag officers who were commanding at the Nore, in the Downs, and at Plymouth, at the ſame time their Lordſhips received the charge againſt you, have all of them been choſen by their Lordſhips to be at Portſmouth in a ſituation to ſit at your trial; and I am in return to acquaint you, that their Lordſhips have ordered the flag officers who were commanding at the above-mentioned places, at the time they received the charge againſt you, to repair immediately to Portſmouth, and hoiſt their flags.

I have the honour to be, Sir, your obedient, humble ſervant,

Hon. Admiral Keppel, Portſmouth. PH. STEPHENS.

SIR, *Admiralty-Office, 5th Jan.* 1779.

HAVING laid before my Lords Commiſſioners of the Admiralty a letter from Mr. Joſh. Sharpe, dated the firſt inſtant, deſiring, on your behalf, and as your agent, that all the letters written by you to me, as Secretary of the Admiralty, from the time when you received your firſt inſtructions to the date of his ſaid letter, may be produced at your trial, in order that ſuch of them may be produced in evidence as you may think fit to call for; I have, in obedience to their Lordſhips' commands, ordered Mr. Robinſon, one of my clerks, to attend at Portſmouth, on the 7th inſtant, with the ſaid letters, accompanied with a ſchedule thereof, atteſted by me.

I am, with great regard, Sir, your moſt obedient humble ſervant,

Honble. Auguſtus Keppel, PH. STEPHENS.

Admiral of the Blue, Portſmouth.

SIR, *Portſmouth, Jan. 6,* 1779.

IN anſwer to your letter propoſing an exchange of liſt of witneſſes with Sir Hugh Palliſer, I have only to remind you of what I mentioned to you this morning, that I was determined to avoid every degree of intercourſe with that gentleman, therefore beg to decline ſaying any thing upon that ſubject.

I am, Sir, your very humble ſervant,

Geo. Jackſon, Eſq. A. KEPPEL.

SIR, *Portſmouth, 9th Jan.* 1779.

HEREWITH I ſend you, for the informatioa of the court, three books of the ſailing and fighting inſtructions, with the alterations and

and additions I have made to them, and likewiſe three books of my additional ſignals and inſtructions.

I am, Sir, your moſt obedient humble ſervant,

Geo. Jackſon, Eſq; Judge Advocate. A. KEPPEL.

SIR, *Court-Room, Portſmouth, 18th Jan.* 1779.

REAR-ADMIRAL Roddam, one of the members of the court-martial, having been taken ill laſt night, and continuing much indiſpoſed, which will prevent his doing any buſineſs to-day; the court, therefore, having thought it moſt adviſeable to adjourn, and it ſtands adjourned till to-morrow morning at ten o'clock accordingly.

I am, with conſideration, Sir, your moſt obedient,
and moſt humble ſervant, GEO. JACKSON.

The Honble. Admiral Auguſtus Keppel.

SIR, *Portſmouth, 18th Jan.* 1779.

I AM extremely ſorry for Rear-Admiral Roddam's indiſpoſition, which, in the judgment of the court, makes a ſitting to adjourn neceſſary; I only ſubmit to the judgment of the court, whether it is not adviſable that I ſhould be preſent when the court aſſembles and adjourns, becauſe in caſe of a criminal proſecution it may be objected, that nothing ought to be done in the abſence of the priſoner.—If this ſhould be the opinion of the court, I am ready and deſirous to attend them immediately. I am Sir, your very humble ſervant,

To the Judge Advocate. A. KEPPEL,

SIR, *Portſmouth, 13th Feb.* 1779.

I RECEIVED laſt night by a meſſenger an order from the Lords Commiſſioners of the Admiralty, dated yeſterday, ſetting forth, that whereas the Judge Advocate of his Majeſty's fleet had, in a letter of the 11th inſtant, tranſmitted to their Lordſhips the ſentence of the court-martial, which has been held at Portſmouth for my trial, upon a charge exhibited againſt me by Vice-Admiral Sir Hugh Palliſer, by which ſentence I am unanimouſly and honourably acquitted of the ſeveral articles contained in the ſaid charge; and that they do therefore thereby take off the ſuſpenſion under which I was laid by their Lordſhips' order of the 31ſt of December laſt, and directing and requiring me to hoiſt my flag on board his Majeſty's ſhip Victory, and to reſume the employment of commander in chief of a ſquadron of his Majeſty's ſhips employed, and to be employed in the Channel, Soundings, or wherever elſe his Majeſty's ſervice may require. I have in conſequence ordered Capt. Faulknor to cauſe my flag to be hoiſted this morning on board the Victory, and have reſumed the command of ſuch ſhips of the ſquadron that were under my orders, now at Spithead and Portſmouth harbour, that are not under any particular directions from their Lordſhips.—I received by the ſame meſſenger your letter ſignifying that their Lordſhips are pleaſed to give me leave of abſence from my duty, to attend my private affairs, and likewiſe another letter of the ſame date.

I am, Sir, your moſt obedient and very humble ſervant,

Ph. Stephens, Eſq. A. K.

FINIS.